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THURSDAY, JANUARY 21, 1999 MORNING SESSION

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THE COURT: OKAY. I THINK WE'RE READY FOR OUR NEXT WITNESS.

MS. CHABER: THANK YOU, YOUR HONOR. AT THIS TIME, THE PLAINTIFF WOULD CALL DR. RAUL MENA. I THINK I NEED TO GO GET HIM.

THE COURT: OKAY.

TESTIMONY OF

RAUL MENA,

A WITNESS CALLED ON BEHALF OF THE PLAINTIFF, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE STATE YOUR NAME CLERK.

THE WITNESS: RAUL MENA.

THE CLERK: PLEASE SPELL YOUR NAME.

THE WITNESS: R-A-U-L. THE LAST NAME IS M-E-N-A.

THE CLERK: THANK YOU. PLEASE TAKE THE STAND.

DIRECT EXAMINATION

BY MS. CHABER: Q. GOOD MORNING, DR. MENA. COULD YOU TELL THE JURY WHAT TYPE OF DOCTOR YOU ARE.

A. I'M A MEDICAL ONCOLOGIST AND A HEMATOLOGIST. I PRIMARILY TREAT PATIENTS WHO HAVE CANCER AND BLOOD DISORDERS.

Q. AND JUST TO MAKE IT CLEAR, ARE YOU PATRICIA HENLEY'S TREATING ONCOLOGIST?

A. I AM PATRICIA HENLEY'S TREATING PHYSICIAN AND

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ONCOLOGIST.

Q. CAN YOU GIVE US A LITTLE BIT OF YOUR BACKGROUND IN TERMS OF YOUR EDUCATION.

A. I WENT TO MEDICAL SCHOOL AT THE UNIVERSITY OF NEW MEXICO SCHOOL OF MEDICINE IN ALBUQUERQUE, NEW MEXICO. I DID AN INTERNAL MEDICINE RESIDENCY AT HARBOR UCLA MEDICAL CENTER IN TORRANCE, CALIFORNIA. I DID FELLOWSHIP TRAINING IN HEMATOLOGY AND IN MEDICAL ONCOLOGY FOR A TOTAL OF THREE YEARS AT THE SAME INSTITUTION. I WAS ALSO CHIEF RESIDENT IN MEDICINE AT HARBOR UCLA MEDICAL CENTER.

I'M BOARD CERTIFIED IN INTERNAL MEDICINE, HEMATOLOGY AND MEDICAL ONCOLOGY. I'M ASSOCIATE CLINICAL PROFESSOR OF MEDICINE AT UCLA SCHOOL OF MEDICINE. I HAVE BEEN IN PRIVATE PRACTICE SINCE 1981.

Q. AND THE HOSPITAL THAT YOU PRACTICE AT?

A. I PRIMARILY PRACTICE AT PROVIDENCE SAINT JOSEPH'S MEDICAL CENTER IN BURBANK, CALIFORNIA.

Q. AND DO YOU HAVE POSITIONS THERE AT THE HOSPITAL?

A. I HAVE TWO POSITIONS AT THE HOSPITAL. I'M THE DIRECTOR OF THEIR CANCER PROGRAM. I'M ALSO CHIEF OF STAFF AT PROVIDENCE SAINT JOSEPH'S MEDICAL CENTER.

Q. DO YOU DO ANY TEACHING?

A. MY RESPONSIBILITIES ARE TO TEACH FELLOWS, MEDICAL STUDENTS AND RESIDENTS AT HARBOR UCLA MEDICAL CENTER WITHIN THE DISCIPLINES OF HEMATOLOGY AND ONCOLOGY.

Q. TELL US AGAIN, "HEMATOLOGY" IS WHAT?

A. HEMATOLOGY IS THE STUDY OF BLOOD AND ITS COMPONENTS. MEDICAL ONCOLOGY IS THE STUDY OF CANCER AND ITS

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TREATMENTS.

Q. AND DID YOU DO TEACHING AS WELL WHEN YOU WERE A

FELLOW?
A. YES. PART OF MY RESPONSIBILITIES AS A FELLOW BOTH IN HEMATOLOGY AND MEDICAL ONCOLOGY WAS TO TEACH RESIDENTS AND MEDICAL STUDENTS.
Q. AND HAVE YOU RECEIVED ANY AWARDS FOR YOUR TEACHING?
A. I RECEIVED A FELLOWSHIP TEACHING AWARD WHEN I WAS FELLOW AND I RECEIVED A CLINICAL FACULTY TEACHING AWARD IN HEMATOLOGY FOR THE ENTIRE DEPARTMENT.
Q. CAN YOU GIVE US AN IDEA WHAT YOU DO AS CHIEF OF STAFF.
A. IT'S AN UNEVIABLE POSITION. PRIMARILY, IT'S TO ENSURE THAT THE RULES AND REGULATIONS OF THE MEDICAL STAFF AT OUR HOSPITAL ARE MET, THAT THE QUALITY ASSURANCE PROGRAM OF THE MEDICAL CENTER IS ONGOING AND APPROPRIATE. AND I'M ALSO INVOLVED IN DISCIPLINING MEMBERS OF THE MEDICAL STAFF.
Q. AND YOU RUN THE CANCER CENTER?
A. I HAVE BEEN THE DIRECTOR OF THE CANCER PROGRAM FOR APPROXIMATELY FIVE YEARS.
Q. AND WHAT DO YOU DO AS THE DIRECTOR OF THE CANCER PROGRAM?
A. I AM RESPONSIBLE FOR DEVELOPING AN EDUCATIONAL PROGRAM FOR THE MEDICAL STAFF AND AN EDUCATIONAL PROGRAM FOR THE COMMUNITY. I AM RESPONSIBLE FOR THE RESEARCH PROGRAM, AND I AM ALSO RESPONSIBLE FOR THE QUALITY ASSURANCE PROGRAM FOR THE MEDICAL CENTER, WHICH INCLUDES OUTCOMES OF THERAPY

AS WELL AS THE ONCOLOGY UNIT.
Q. NOW, I NOTICE SOMETHING ON YOUR CV, THAT YOU'RE CANCER LIAISON PHYSICIAN TO THE CANCER PROGRAM. WHAT IS THAT?
A. THE AMERICAN COLLEGE OF SURGEONS HAS A SUBCOMMITTEE, WHICH IS A COMMISSION ON CANCER. AND CERTAIN HOSPITALS THROUGHOUT THE COUNTRY PARTICIPATE WITH THE AMERICAN COLLEGE OF SURGEONS TO DERIVE STANDARDS AND DERIVE RESEARCH ON OUTCOMES AND TO ENSURE THAT PATIENTS WITH CANCER GET THE HIGHEST LEVEL OF CARE THROUGHOUT THE COUNTRY. MANY HOSPITALS, NOT ALL, UNDERGO AN ACCREDITATION PROCESS FROM THE AMERICAN COLLEGE OF SURGEONS. I'M RESPONSIBLE TO ENSURE THAT WE BECOME ACCREDITED AND REMAIN ACCREDITED.
Q. NOW, HAVE YOU DONE ANY PUBLICATIONS IN THE FIELD OF HEMATOLOGY OR ONCOLOGY?
A. THERE IS A SERIES OF PUBLICATIONS DEALING WITH LYMPHOMAS, BLOOD DISORDERS, LEUKEMIAS, AS WELL AS A SERIES OF PUBLICATIONS FOR THE COMMUNITY ON BREAST CANCER, PROSTATE CANCER, COLORECTAL CANCER. I'VE MOST RECENTLY BEEN THE EDITOR OF THOSE PUBLICATIONS.
Q. ARE YOU CHARGING OR BEING PAID FOR YOUR TIME HERE?
A. THERE IS NO FEE FOR MY PRESENCE HERE TODAY.
Q. DOCTOR, WHEN DID YOU FIRST START BEING PATRICIA HENLEY'S PHYSICIAN?
A. I BECAME PATRICIA'S DOCTOR ON FEBRUARY 17TH, 1998, WHEN SHE FIRST CAME TO MY OFFICE FOR CONSULTATION.
Q. AND HAD YOU KNOWN ABOUT HER SITUATION PRIOR TO

THAT?
A. MY RECOLLECTION WAS THAT ONE OF HER PHYSICIANS, A DR. SMITH, HAD MENTIONED HER TO ME AND MENTIONED HER X-RAYS. AND I WAS WAITING FOR HER TO BE REFERRED TO THE OFFICE TO BE EVALUATED.

Q. NOW, WHEN YOU SEE A NEW PATIENT FOR THE FIRST TIME, HOW DO YOU GO ABOUT EVALUATING THEM?
A. WE NORMALLY ASK THE PATIENTS TO MAKE AVAILABLE TO US ALL THE INFORMATION THAT IS HANDY, ALL THE X-RAYS, ALL THE REPORTS, ALL THE EVALUATIONS AND WHENEVER POSSIBLE, THE ACTUAL SLIDES OR WHATEVER BIOPSIES WERE PERFORMED. SOMETIMES WE HAVE THEM SENT TO OUR OFFICE AHEAD OF TIME, SOMETIMES THEY COME WITH THE PATIENTS. IT'S HIGHLY VARIABLE. WE LIKE TO HAVE AS MUCH INFORMATION AS POSSIBLE SO AN APPROPRIATE EVALUATION CAN BE MADE REGARDING THE NATURE OF THE ILLNESS AND THE POTENTIAL TREATMENT.
Q. DO YOU DO YOU MAKE AN INDEPENDENT EVALUATION OF WHAT YOU CONSIDER THAT PERSON'S DISEASE TO BE?
A. YES, I DO.
Q. AND IN MR. HENLEY'S CASE, DID YOU MERELY ECHO PRIOR PHYSICIANS' DIAGNOSIS OF HER OR DID YOU MAKE AN INDEPENDENT EVALUATION YOURSELF?
A. WHENEVER I SEE A PATIENT, I MAKE AN INDEPENDENT EVALUATION OF THEIR ILLNESS. EVEN IF THEY HAVE BEEN -- IF THEY HAVE BEEN TREATED ELSEWHERE AND HAPPEN TO MOVE AND COME TO BURBANK, WE WOULD STILL START FROM SCRATCH IN TERMS OF THE EVALUATION OF THE ILLNESS.
Q. AND IS IT IMPORTANT TO YOU FOR YOUR EVALUATION AS

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TO WHAT THE PERSON HAS TO PUT THE CORRECT DIAGNOSIS ON THAT PERSON?
A. THAT IS WHAT'S DONE.
Q. AND WHAT ARE YOU TREATING MS. HENLEY FOR?
A. MS. HENLEY IS BEING TREATED FOR LUNG CANCER. THE SPECIFIC SUBTYPE IS SMALL CELL.
Q. AND HOW DID YOU REACH THAT CONCLUSION?
A. WE REACHED THAT CONCLUSION BY THE PATIENT'S HISTORY, THE PHYSICAL EXAMINATION, THE REVIEW OF THE DIAGNOSTIC STUDIES THAT WERE PERFORMED, AND THE REVIEW OF THE BIOPSY MATERIAL.
Q. DID YOU ALSO LOOK AT THINGS LIKE CT SCANS AND X-RAYS?
A. WHEN WE TALK ABOUT REVIEWING THE MATERIAL, IT MEANS NOT JUST A REPORT, BUT WHENEVER POSSIBLE, TO ACQUIRE THE SCANS, X-RAYS, WHATEVER IS DONE.
Q. AND I ASSUME THAT WHEN YOU LOOK AT A PATIENT FOR THE FIRST TIME, YOU HAVE AN IMPRESSION AS TO WHAT'S POSSIBLE FOR THEM TO HAVE. DO YOU LOOK AT THINGS IN TERMS OF HAVING A DIFFERENTIAL DIAGNOSIS?
A. MOST ILLNESSES COULD HAVE A VARIETY OF CAUSES. AND YOU WOULD LIKE TO BE AS PRECISE AS POSSIBLE PRIOR TO INTERVENING SO THAT YOU GIVE THE PATIENT THE HIGHEST POSSIBILITY OF EITHER BEING CURED OR HAVING A BETTER QUALITY OF LIFE OR A LONGER LIFE. SO I WOULD LIKE TO BE AS PRECISE AS POSSIBLE, GIVEN THE INFORMATION THAT YOU HAVE.
Q. BASED ON THE INFORMATION THAT YOU HAD ABOUT MS. HENLEY, DID YOU HAVE A DIFFERENTIAL DIAGNOSIS OR THINGS THAT

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YOU CONSIDERED?
A. WITH THE AGGREGATE OF INFORMATION THAT WE HAD AND REVIEWING THE X-RAYS, MY DIAGNOSIS WAS THAT SHE HAD A LUNG CANCER, THAT IT BEGAN IN THE LEFT LUNG SOMEWHERE, AND THAT THE SUBTYPE WAS SMALL CELL.
Q. WAS THYMIC CANCER EVER A CONSIDERATION?
A. NO, IT WAS NOT.
Q. AND WHY NOT?

A. WHEN WE REVIEWED THE CAT SCANS, THE AREA WHERE THE THYMIC MASS IS USUALLY IDENTIFIED DID NOT APPEAR SUFFICIENTLY ABNORMAL, AT LEAST TO MY EYES, AND IN AN ADULT ONE WOULD EXPECT THE THYMUS GLAND -- WE USE THE WORD INVOLUTED OR SHRUNKEN, SCARRED DOWN SO THAT IT'S ACTUALLY NOT SEEN. WHENEVER WE SEE A THYMUS IN AN ADULT, SOMETHING IS GOING ON. THE PATTERN ON THE X-RAY AND THE TYPE OF CANCER THAT SHE HAD WAS MOST COMPATIBLE WITH SMALL CELL LUNG CANCER.

Q. IF YOU ONLY LOOKED AT THE X-RAY PATTERN, WOULD THAT PATTERN RAISE SOME SUSPICIONS ABOUT A LYMPHOMA?

A. THE MASS THAT WAS INITIALLY IDENTIFIED ON MS. HENLEY INVOLVED THE AREA WITHIN OR JUST OUTSIDE THE LEFT LUNG. IN THAT AREA, YOU'D HAVE A MAIN -- IT'S CALLED THE LEFT MAIN BRONCHUS, WHICH IS THE AIR PASSAGE THAT CONNECTS TO THE CENTER OF YOUR CHEST OR THE TRACHEA. THROUGH IT YOU HAVE BLOOD VESSELS, LYMPH NODES. NEAR IT YOU HAVE THE ESOPHAGUS AND SORT OF IN FRONT AND BELOW IT YOU HAVE THE HEART. THERE'S A WHOLE VARIETY OF STRUCTURES THAT ARE THERE. AND THERE IS A VARIETY OF TISSUES THAT COULD GIVE

RISE TO AN ABNORMALITY.

SO I THINK HAVING SAID ALL THAT, THE PATTERN WAS STILL MOST COMPATIBLE. LUNG LYMPHOMA WOULD BE A POSSIBILITY. IT WOULD BE TREATED QUITE DIFFERENTLY IF SOMEONE ALSO WEREN'T TO HAVE SOME FORM OF A TISSUE DIAGNOSIS, A BIOPSY THAT IS INTERPRETED BY A PATHOLOGIST, SO THAT THERE IS NO MISTAKE ON THE TYPE OF TISSUE OR THE TYPE OF CANCER THAT WE'RE TREATING.

Q. AND THE FINDING OF THE TISSUE DIAGNOSIS BEING SMALL CELL CARCINOMA, DID THAT ELIMINATE LYMPHOMA AS A POSSIBILITY?

A. THE TYPE OF CANCER IDENTIFIED PATHOLOGICALLY, THE SO-CALLED SMALL CELL LUNG CANCER, RULED OUT THE OTHER POSSIBILITIES.

Q. AND YOU HAVE BEEN TREATING MS. HENLEY NOW FOR HOW LONG?

A. IT'S GOING TO BE A YEAR.

Q. AND ARE YOU COMFORTABLE WITH THE DIAGNOSIS OF LUNG CANCER?

A. I'M VERY COMFORTABLE WITH THE DIAGNOSIS OF LUNG CANCER IN MS. HENLEY.

Q. AND THE COURSE OF HER TREATMENT AND CARE, HAS THAT BEEN CONSISTENT WITH YOU TREATING HER FOR A LUNG CANCER?

A. THE COURSE OF HER TREATMENT HAS BEEN CONSISTENT WITH SMALL CELL LUNG CANCER.

Q. AND HAS THE RESPONSE THAT MS. HENLEY'S HAD BEEN CONSISTENT WITH A SMALL CELL LUNG CANCER?

A. THE RESPONSE THAT SHE HAS HAD TO TREATMENT IS CONSISTENT WITH SMALL CELL LUNG CANCER.

MS. CHABER: I WANT TO HAVE SOME DOCUMENTS MARKED.

THE CLERK: PLAINTIFF'S EXHIBIT 44.

MS. CHABER: LET ME JUST CHECK WITH COUNSEL FOR A SECOND.

(COUNSEL CONFERRED OFF THE RECORD)

MS. CHABER: I WOULD HAVE MARKED A THREE-PAGE REPORT DATED FEBRUARY 17TH, 1998.

THE COURT: IS THAT 44, TATSUO, FOR

IDENTIFICATION?
THE CLERK: YES, 44.
(DOCUMENT MORE PARTICULARLY
DESCRIBED IN THE INDEX MARKED
FOR IDENTIFICATION PLAINTIFF'S
EXHIBIT # 44)
MS. CHABER: I WILL GIVE YOU THE JUDGE'S
COPIES. THE NEXT ONE IS DATED 3-4-98, TWO PAGES.
THE CLERK: PLAINTIFF'S EXHIBIT 45
(DOCUMENT MORE PARTICULARLY
DESCRIBED IN THE INDEX MARKED
FOR IDENTIFICATION PLAINTIFF'S
EXHIBIT # 45)
MS. CHABER: AND THEN I WOULD HAVE MARKED AS A
GROUP 47 PAGES.
THE CLERK: PLAINTIFF'S EXHIBIT 46.
(DOCUMENT MORE PARTICULARLY

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DESCRIBED IN THE INDEX MARKED
FOR IDENTIFICATION PLAINTIFF'S
EXHIBIT # 46)
MS. CHABER: I HAVE TO GET THE THREE-HOLE
COPIES.
MR. BARRON: THERE ARE 48 IN HERE.
MS. CHABER: YOU COUNTED 48?
MR. BARRON: I DID THE MATH. THAT LAST PAGE
THERE IS 51.
MS. CHABER: YOUR MATH IS BETTER.
THE COURT: ARE YOU TALKING ABOUT PLAINTIFF'S
EXHIBIT 46?
MR. BARRON: YES.
MS. CHABER: PLAINTIFF'S 47.
THE COURT: 46.
MS. CHABER: IT'S 48 PAGES LONG.
THE COURT: IT'S EXHIBIT 46.
MR. BARRON: 46.
THE COURT: PLAINTIFF'S 46 IS 48 PAGES LONG?
MS. CHABER: YES. IT COULD BE A LITTLE
CONFUSING.
THE COURT: OKAY. THANK YOU VERY MUCH, MR.
BARRON.
MS. CHABER: AND YOUR HONOR, I DID THREE-HOLE
PUNCH A SET.
THE CLERK: THERE'S ONE RIGHT HERE.
MS. CHABER: IT SEEMS TO HAVE DISAPPEARED.
Q. DR. MENA I'VE HANDED YOU PLAINTIFF'S

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EXHIBITS 44, 45 AND 46. LET'S JUST TAKE THEM ONE AT A
TIME. PLAINTIFF'S 44, IS THAT A RECORD PREPARED BY YOU?
A. EXHIBIT 44 IS A CONSULTATION PREPARED BE ME ON
THE FIRST DAY THAT I SAW MS. HENLEY.
Q. AND THE CONSULTATION, DOES THIS CONSULTATION
REFLECT WHAT YOU DID IN YOUR CARE -- IN YOUR EVALUATION OF
MS. HENLEY?
A. THE NOTE REFLECTS MY INITIAL ENCOUNTER WITH MS.
HENLEY, MY PHYSICAL EXAM, MY EVALUATION OF ALL THE AVAILABLE
DATA AND I BELIEVE A TREATMENT PLAN.
Q. AND IS THIS SOMETHING THAT WOULD BE CONTAINED
WITHIN THE MEDICAL RECORDS THAT YOU MAINTAINED?
A. YES, IT IS.
Q. AND ARE THESE MAINTAINED AS A BUSINESS RECORD OF

YOUR OFFICE?
A. YES, IT IS.
MS. CHABER: I WOULD MOVE THIS INTO EVIDENCE AT THIS TIME, YOUR HONOR.
MR. BARRON: YES, YOUR HONOR. THERE WOULD BE AN OBJECTION. IF YOU WOULD LOOK, FOR EXAMPLE, ON PAGE 2 UNDER "RECOMMENDATIONS," THERE IS SOME MATERIAL THAT I THINK --
MS. CHABER: I CAN CERTAINLY REDACT IT.
MR. BARRON: IN ADDITION, I HAVE NO OBJECTION TO THE WITNESS DISCUSSING ANY OF THE COMPONENTS. BUT WITHOUT TESTIMONY, IT WOULD BE OPINION TESTIMONY THAT SHOULD NOT GO IN WITHOUT EXPLANATION. SO I OBJECT TO IT ON THE BASIS OF HEARSAY.
THE COURT: YOU'RE SAYING THAT IF IT IS

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ACCOMPANIED BY TESTIMONY THAT EXPLAINS IT, THAT THEN OBJECTION WOULD BE WITHDRAWN.
MR. BARRON: YES, ANY OF THE ELEMENTS IN HERE.
MS. CHABER: I THINK IT'S AN EXCEPTION TO THE HEARSAY RULE, YOUR HONOR, AS A BUSINESS RECORD.
THE COURT: LET'S DO THIS. LET'S JUST TALK VERY BRIEFLY ABOUT THIS.
MS. CHABER: OKAY.
(COURT AND COUNSEL CONFER OUTSIDE
THE PRESENCE OF THE JURY)
THE COURT: ALL RIGHT. BACK ON THE RECORD. I UNDERSTAND, AFTER A DISCUSSION WITH COUNSEL AT THE SIDEBAR, THAT BY AGREEMENT YOU BOTH AGREE THERE IS CERTAIN INFORMATION ON 44 WHICH IS NOT RELEVANT TO THE CASE AND BY AGREEMENT, YOU ARE GOING TO SUBSTITUTE IN HOPEFULLY AT THE NEXT RECESS OR AT LUNCHTIME A CORRECTED VERSION OF 44, AND THAT THAT'S AGREEABLE TO BOTH OF YOU AND YOU ARE STIPULATING TO DO THAT. IS THAT CORRECT SO FAR?
MR. BARRON: THAT'S CORRECT, YOUR HONOR.
MS. CHABER: YES.
THE COURT: AS I UNDERSTAND IT NOW, WITH THAT UNDERSTANDING, DOES THE DEFENSE HAVE ANY OBJECTION TO 44 BEING RECEIVED?
MR. BARRON: NO, YOUR HONOR.
THE COURT: ALL RIGHT. THEN 44 IS RECEIVED, SUBJECT TO COUNSEL'S AGREED REDACTION.
(DOCUMENT MORE PARTICULARLY
DESCRIBED IN THE INDEX RECEIVED

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IN EVIDENCE AS PLAINTIFF'S
EXHIBIT # 44)
MS. CHABER: AND YOUR HONOR, I BELIEVE 45, I'D OFFER THAT INTO EVIDENCE.
THE COURT: ALL RIGHT. IS THERE ANY OBJECTION TO 45?
MR. BARRON: NO, YOUR HONOR.
THE COURT: ALL RIGHT. 45 IS RECEIVED.
(DOCUMENT MORE PARTICULARLY
DESCRIBED IN THE INDEX RECEIVED
IN EVIDENCE AS PLAINTIFF'S
EXHIBIT # 45)
MS. CHABER: Q. AND DR. MENA, COULD YOU LOOK AT EXHIBIT 46, WHICH IS THE 48 PAGES, AND COULD YOU FLIP THROUGH THERE FOR THE PURPOSES OF SOME GENERAL QUESTIONS INITIALLY.
A. (EXAMINING) OKAY.

Q. ARE THESE PAGES IN EXHIBIT 46 COPIES OF RECORDS THAT YOU MAINTAIN IN YOUR BUSINESS AS PART OF YOUR TREATMENT AND CARE OF PATRICIA HENLEY?
A. THEY ARE.
MS. CHABER: I WOULD MOVE 46 INTO EVIDENCE, YOUR HONOR.
MR. BARRON: WE HAVE LOOKED AT THEM NOW. NO OBJECTION, YOUR HONOR.
THE COURT: OKAY. 46 IS RECEIVED.
(DOCUMENT MORE PARTICULARLY DESCRIBED IN THE INDEX RECEIVED

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IN EVIDENCE AS PLAINTIFF'S EXHIBIT # 46)
MS. CHABER: Q. NOW, EXHIBIT 46, THE RECORD OF YOUR TREATMENT AND CARE, IS THAT UP TO DATE?
A. THE LAST ENTRY THAT I HAVE HERE IS 11-17-98. I BELIEVE THERE WERE ENTRIES IN DECEMBER.
Q. AND DID YOU IN FACT SEE MS. HENLEY RECENTLY?
A. I SAW MS. HENLEY ON THE 19TH OF JANUARY, 1999.
Q. OKAY. SO TWO DAYS AGO, BASICALLY?
A. THAT IS CORRECT.
Q. LET'S TALK FIRST ABOUT EXHIBIT 44. WHAT IS EXHIBIT 44, THIS FEBRUARY 17TH, 1998 EXHIBIT?
A. THIS CONSISTS OF MY INITIAL EVALUATION OF MS. HENLEY AND MY INITIAL REVIEW OF THE AVAILABLE INFORMATION, MY PHYSICAL EXAM AND MY PLANS OF THERAPY.
Q. AND IN YOUR INITIAL REVIEW AND EVALUATION, DID YOU OBTAIN A SMOKING HISTORY FROM MS. HENLEY?
A. YES, I DID.
Q. AND WHAT WAS THE SMOKING HISTORY THAT YOU MAINTAINED?
A. THE NOTE STATES THAT: "THE PATIENT RELATES A HISTORY DATING BACK OVER THE PAST 35 YEARS WHERE SHE SMOKED BETWEEN TWO AND THREE AND ONE-HALF PACKS OF CIGARETTES DAILY."
Q. NOW, YOU NOTE IN THERE THAT THERE HAS BEEN A COUGH FOR ALMOST THREE YEARS?
A. THAT IS CORRECT.
Q. AND THAT WAS SOMETHING SHE REPORTED?

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A. NORMALLY WHEN -- I'M NOT ENTIRELY SURE. NORMALLY WHEN A NEW PATIENT COMES TO THE OFFICE, WE HAVE A SERIES OF QUESTIONS THAT DEAL WITH YOUR HAIR, YOUR NOSE, YOUR SKIN, YOUR NAILS, HOW OFTEN YOU GO TO THE BATHROOM. BASICALLY TO GET A LAUNDRY LIST TO ENSURE WHERE YOU ARE AT ANY ONE POINT IN TIME, TO IDENTIFY PROBLEMS AND TO KNOW HOW OUR TREATMENT WILL BE AFFECTING YOU.
THE ISSUE OF MILD COUGH ON THE MEDICAL RECORD, AS I SAY, I'M NOT SURE WHETHER SHE VOLUNTEERED IT OR WHETHER IT WAS PART OF MY REVIEW OF SYSTEMS.
Q. YOU INDICATE THAT: "THERE HAS BEEN NO SIGNIFICANT HEMOPTYSIS."
FIRST OF ALL, THE JURY'S HEARD THAT HEMOPTYSIS MEANS COUGHING UP OF BLOOD. WHEN YOU SAY "NO SIGNIFICANT HEMOPTYSIS," WHAT DO YOU MEAN, THAT SHE HAD NOT COUGHED UP ANY BLOOD PRIOR TO THAT DATE?
A. THE WORD "SIGNIFICANT" IS AN OPERATIONAL ONE. IF YOU HAVE TRACES OF BLOOD AND IT'S NOT CHANGING, ONE CAN MAKE THE ASSUMPTION THAT IT'S RELATED TO THE CANCER ITSELF. ONE COULD MAKE AN ASSUMPTION THAT IT MAY BE RELATED TO

INFECTION, WHATEVER. HOWEVER, ONE OF THE CAUSES OF DEATH IN LUNG CANCER IS EXSANGUINATION.

Q. WHAT IS THAT?

A. BLEEDING TO DEATH FROM THE LUNGS. THEREFORE, IF THERE WAS A CHANGE, IF THERE IS A CONCERN THAT THE PATTERN IS CHANGING, IT MAY REQUIRE URGENT TREATMENT IN ONE FORM OR ANOTHER.

THE WORD "SIGNIFICANT" MEANT IF THERE WAS SOME,

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THERE HAS BEEN NO CHANGE AND I DID NOT NEED TO EMERGENTLY ACT IN HER BEHALF.

Q. AND IN FACT, HAVE THERE BEEN REPORTS OF MS. HENLEY COUGHING UP BLOOD-TINGED SPUTUM?

A. APPROXIMATELY FOUR DAYS AFTER I INITIALLY SAW HER, SHE WAS SEEN IN THE EMERGENCY ROOM WITH A CHANGE AND COUGHING INCREASED AMOUNTS OF BLOOD.

Q. AND THAT WAS BEFORE SHE HAD HAD ANY TREATMENT?

A. IT WAS BEFORE SHE WAS STARTED ON TREATMENT.

Q. OKAY. AND IN PLAINTIFF'S EXHIBIT 44, YOUR INITIAL NOTE ON MS. HENLEY, DID YOU REACH A CONCLUSION IN THAT NOTE AS TO WHAT SHE WAS SUFFERING FROM?

A. UNDER MY IDENTIFICATION OF HER PROBLEMS, IT'S STATED THAT MY IMPRESSION IS SHE HAS LIMITED SMALL CELL BRONCHOGENIC CARCINOMA.

Q. "BRONCHOGENIC" MEANS LUNG CANCER? OR WHAT DOES IT MEAN?

A. BRONCHOGENIC CARCINOMA MEANS LUNG CANCER.

Q. AND "LIMITED SMALL CELL BRONCHOGENIC CARCINOMA." SMALL CELL IS REFERRING TO THE PATHOLOGICAL DIAGNOSIS?

A. THAT IS CORRECT.

Q. WHAT DOES "LIMITED" MEAN?

A. BEFORE THE ERA OF CHEMOTHERAPY -- AND CHEMO SIMPLY MEANS DRUGS USED TO TREAT CANCER, AND THERE ARE MANY DIFFERENT KINDS -- THE DIAGNOSIS OF SMALL CELL CARCINOMA OF THE LUNG WAS TREATED EITHER WITH SURGICAL REMOVAL PRIMARILY, OR WITH RADIATION. UNFORTUNATELY, THE CURE RATES WERE EXCEEDINGLY LOW.

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WHEN CHEMOTHERAPY BEGAN TO BE USED FOR SMALL CELL CARCINOMA, RADIATION WAS STILL BEING INCORPORATED INTO OUR TREATMENT REGIMENS. THEREFORE, AN OPERATIONAL OR FUNCTIONAL STAGING SYSTEM WAS CREATED.

BY LIMITED SMALL CELL, WE MEAN THAT THE DISEASE IS LIMITED TO AN AREA THAT COULD BE ENCOMPASSED WITHIN A RADIATION THERAPY FIELD. AND THAT'S SORT OF A COMPLEX ANSWER. WHAT IT MEANS IS IF THE RADIOLOGIST, THE RADIATION ONCOLOGIST CAN GIVE HER RADIATION TO A RELATIVELY SMALL AREA OF THE LUNG, THAT IS CALLED LIMITED.

DISEASE THAT IS OUTSIDE OF THE LUNGS, LIVER, BONE, BRAIN, SKIN OR PERHAPS WATER THAT SURROUNDS THE LUNGS WOULD NOT BE CLASSIFIED AS SMALL AS LIMITED DISEASE, THAT WOULD BE CLASSIFIED AS EXTENSIVE OR SYSTEMIC DISEASE.

FOR THOSE PEOPLE, RADIATION WOULD NOT BE CONSIDERED AS PART OF ITS CURATIVE TREATMENT, WHEREAS IN LIMITED DISEASE, MOST OF US WOULD INCLUDE IT WITH CHEMOTHERAPY AS PART OF A CURATIVE PROGRAM.

Q. AND IF I UNDERSTAND THIS CORRECTLY, IT'S BECAUSE THERE IS AN AREA THAT THE RADIATION BEAM CAN BE DIRECTED AT RATHER THAN THE CANCER BEING AT MANY DIFFERENT LOCATIONS?

A. THAT IS CORRECT.

Q. THE USE OF THE WORD "LIMITED" DOESN'T MEAN THAT

THIS IS A SMALL CANCER OR SOMETHING NOT SERIOUS, DOES IT?
A. NO. THE WORD "LIMITED" IS AGAIN A FUNCTIONAL TERM USED TO CONSIDER THE POSSIBILITY OF THE USE OF RADIATION, AND IT IMPARTS A BETTER OUTCOME, THAT THERE IS A HIGHER PROBABILITY OF ACHIEVING A RESPONSE TO TREATMENT AND

A HIGHER PROBABILITY OF BEING EITHER DISEASE FREE OR LIVING WITH CANCER IN SO MANY MONTHS DOWN THE ROAD.
Q. AND AT THE TIME MS. HENLEY CAME TO SEE YOU AND YOU FORMED YOUR OPINION WITH RESPECT TO WHAT SHE WAS SUFFERING FROM, DO YOU HAVE AN OPINION AS TO WHAT WOULD HAVE HAPPENED TO HER HAD SHE NOT HAD THERAPY?
A. THE INFORMATION IS RELATIVELY OLD. IF WE GO BACK TO THE TIME BEFORE CHEMOTHERAPY, PATIENTS WITH SMALL CELL CARCINOMA ON THE AVERAGE WOULD LIVE LESS THAN THREE MONTHS. AS SHORT AS A MONTH, AS LONG AS THREE MONTHS. IT DEPENDS A LITTLE BIT ON HOW MUCH CANCER THEY HAD WHEN THEY STARTED. THIS HAPPENS TO BE A DISEASE THAT GROWS RELATIVELY RAPIDLY. SO WITHOUT ANY FORM OF THERAPY, PATIENTS TEND TO DIE RELATIVELY QUICKLY. FORTUNATELY, WE HAVE VERY FEW PEOPLE THAT WE DON'T TREAT.
Q. AND YOU CAME UP WITH A PLAN OF TREATMENT FOR HER AT THAT TIME?
A. YES, I DID.
Q. AND WHAT WAS THE PLAN OF TREATMENT THAT YOU CAME UP WITH?
A. THE TREATMENT PLAN FOR HER PARTICULAR AMOUNT OF DISEASE INCLUDED THE USE OF CHEMOTHERAPY AND THE ADDITION OF RADIATION TO HER TREATMENT PROGRAM. SHE RECEIVED A DRUG CALLED ETOPOSIDE, E-T-O-P-O-S-I-D-E, AND A DRUG CALLED CARBOPLATIN, C-A-R-B-O-P-L-A-T-I-N, AND THESE DRUGS ARE GIVEN INTRAVENOUSLY APPROXIMATELY EVERY 21 TO 28 DAYS FOR A PERIOD OF APPROXIMATELY SIX MONTHS.
THERE IS A LITTLE BIT OF DEBATE AS TO WHEN IS THE

BEST TIME TO DELIVER RADIATION TREATMENTS. SOMETIMES WE GIVE IT ON THE FIRST DAY OR THE FIRST CYCLE, SOMETIMES WE GIVE IT ON CYCLE TWO. SOMETIMES IT IS GIVEN ON CYCLE THREE. IT'S NOT QUITE CLEAR WHAT IS THE OPTIMAL WAY OF DOING IT. WE BELIEVE, THOUGH, THAT IT'S BEST GIVEN TOGETHER WITH CHEMOTHERAPY; THAT IS, GIVING THE RADIATION TOGETHER WITH THE CHEMOTHERAPY. THE RESULTS SEEM TO BE BETTER THAN IF GIVEN SEQUENTIALLY. THAT IS, TO GIVE ALL THE CHEMOTHERAPY FIRST, FOLLOWED BY THE RADIATION. THE PRICE, HOWEVER, IS AN ENHANCED TOXICITY.
Q. NOW, CHEMOTHERAPY, WHAT IS THE PRINCIPLE THAT IT WORKS ON IN TERMS OF AFFECTING THE CANCER?
A. "CHEMOTHERAPY" SIMPLY MEANS DRUG TREATMENTS. THESE DRUGS CAN BE GIVEN IN A PILL FORM, THAT IS BY MOUTH, IT COULD BE GIVEN AS AN INJECTION INTO THE MUSCLES, IT CAN BE GIVEN AS A SUBCUTANEOUS, THAT IS INTO THE SKIN, THEY CAN BE GIVEN INTRAVENOUSLY, AND DIFFERENT DRUGS ARE MAYBE GIVEN IN A DIFFERENT FORM.
THE DRUGS CIRCULATE THROUGH YOUR WHOLE BODY WITH PERHAPS AN EXCEPTION -- AND I WILL GET TO THAT ONE IN A MINUTE -- AND THEY INTERFERE WITH THE CANCER CELLS' ABILITY TO GROW AND DEVELOP, ENHANCING THE DEATH OF THE CANCER CELLS. AND IT BASICALLY TRAVELS THROUGHOUT YOUR WHOLE BODY AND OTHER TISSUES ARE ALSO AFFECTED BY THE CHEMOTHERAPY.
I SAID WITH ONE EXCEPTION, AND THAT AT LEAST FOR SMALL CELL LUNG CANCER, WE BELIEVE THAT THE BRAIN ITSELF

ACTS AS A SANCTUARY, AN AREA WHERE THE CHEMOTHERAPY DOES NOT
PENETRATE QUITE AS WELL. SO ONE OF OUR FEARS IS ALWAYS THAT

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WE MAY BE TREATING THE CANCER THROUGHOUT THE WHOLE BODY AND
HAVING GREAT RESULTS, BUT WE MAY NOT BE DOING ANYTHING IN
THE BRAIN.

Q. SO DURING THE COURSE OF GIVING SOMEBODY
CHEMOTHERAPY SUCH AS YOU DID WITH MS. HENLEY -- AND WE'LL
GET TO THE SPECIFICS OF THAT IN A MINUTE -- THE CHEMOTHERAPY
IS NOT LIMITED TO ONLY THE PLACE WHERE THE CANCER IS
VISUALIZED; IS THAT TRUE?

A. THAT IS CORRECT.

Q. SO IN SOME WAYS, BY DOING THE CHEMOTHERAPY, IF
THE CANCER IS METASTASIZING ELSEWHERE, YOU'RE KEEP THAT
UNDER CONTROL AS WELL?

A. THAT IS CORRECT.

Q. SO WHAT WAS DETERMINED TO BE WHEN MS. HENLEY
WOULD START HER TREATMENTS?

A. THE DATE THAT SHE STARTED TREATMENT WAS
DETERMINED ON THE AVAILABILITY OF MEDICATIONS FOR HER.

Q. OKAY. AND YOU CAME UP WITH A PLAN IN TERMS OF
HOW MANY TIMES TO ADMINISTER THE CHEMOTHERAPY?

A. THE CRITERIA THAT WE USE WITH THE DELIVERY OF
CHEMOTHERAPY -- AND THIS PRETTY MUCH APPLIES TO ANY
CANCER -- IS YOU SHOULD ONLY GIVE THOSE DRUGS THAT ARE
WORKING. IT'S NOT HELPFUL TO GIVE MEDICINES TO PEOPLE WHICH
MAKE THEM SICK IF THE CANCER IS JUST GROWING AND WE'RE NOT
DOING ANYTHING TO IT. SO NORMALLY WE EXPECT IN THIS
PARTICULAR CANCER TO HAVE A HIGH PROBABILITY OF SHRINKING
IT, AND NORMALLY WE DELIVER SOMEWHERES BETWEEN FOUR AND SIX
MONTHS OF THERAPY CONTINUOUSLY. GIVING MORE USUALLY HAS NOT

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TRANSLATED INTO AN IMPROVED CURE RATE.

Q. AND ARE THERE SIDE POTENTIAL SIDE EFFECTS OF
CHEMOTHERAPY?

A. YES, THERE ARE MANY SIDE EFFECTS OF CHEMOTHERAPY.

Q. CAN YOU TELL US ABOUT SOME OF THEM OR SOME OF THE
MOST COMMON ONES?

A. CHEMOTHERAPY AFFECTS PRIMARILY THOSE CELLS IN OUR
BODIES THAT ARE GROWING RAPIDLY, AND THOSE CELLS INCLUDE THE
HAIR FOLLICLES -- MOST INDIVIDUALS LOSE ALL THEIR HAIR --
THE LINING OF THE MOUTH, THE LINING OF THE THROAT, THE
LINING OF THE ESOPHAGUS, THE LINING OF THE STOMACH, THE
LINING OF THE SMALL BOWEL.

THOSE CELLS GROW VERY, VERY RAPIDLY AND WE TEND
TO INJURE THOSE CELLS. SO YOU CAN IMAGINE FALLING DOWN AND
SCRAPING YOUR HAND. YOU HAVE RAW TISSUE. AND THOSE TISSUES
CAN BECOME RAW THROUGHOUT THE BODY. AND THE ACID THAT
YOU'RE PRODUCING IN YOUR STOMACH WOULD CAUSE MODERATE
AMOUNTS OF PAIN.

ALSO, AS A RESULT OF INJURING THE LINING OF THE
BOWEL, YOU ARE UNABLE TO DIGEST FOODS PROPERLY. SO MANY
INDIVIDUALS DEVELOP DIARRHEA.

THE THIRD COMPONENT OF THE RAPIDLY GROWING CELLS
ARE THE CELLS THAT GROW IN YOUR BONE MARROW, THE FACTORY
WHERE YOU PRODUCE BLOOD. THESE INDIVIDUALS WILL DEVELOP A
LOW HEMOGLOBIN, WHICH MEANS YOU BECOME ANEMIC AND A SENSE OF
FATIGUE THEN DEVELOPS, AND YOU MAY REQUIRE BLOOD
TRANSFUSIONS.

IN OUR BLOOD, WE ALSO HAVE WHITE BLOOD CELLS AND

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THE WHITE BLOOD CELLS ARE THE CELLS THAT IF WE GET AN INFECTION, THEY FORM PUS. AND THERE'S SEVEN DIFFERENT TYPES OF WHITE CELLS.

Q. THAT IS A GOOD THING; RIGHT?

A. YES. IT'S ALWAYS GOOD TO MAKE PUS. WHEN YOU DON'T HAVE ENOUGH OF THESE WHITE CELLS, YOU BECOME VERY MUCH PRONE TO INFECTIONS. AND THE INFECTIONS CAN BE LETHAL.

THE THIRD COMPONENT IN THE BLOOD THAT BECOMES A CRITICAL ITEM IS A FRAGMENT OF A CELL WE CALL A PLATELET. AND WHAT THE PLATELETS DO IS WHEN YOU CUT YOURSELF, IT FORMS A SCAB. IT PREVENTS YOU FROM HEMORRHAGING.

THOSE THREE TYPES OF BLOOD CELLS ARE DIMINISHED DURING CHEMOTHERAPY AND THEY CAN CAUSE FATIGUE, INFECTION, BLEEDING. AND IT'S REALLY OUR BIGGEST CONCERN. THE HAIR LOSS IS COSMETIC IN MANY WAYS. THE MOUTH AND THE DIARRHEA ARE UNCOMFORTABLE BUT NOT LIFE-THREATENING MOST OF THE TIME. THE WHITE CELLS, THE PLATELETS CAN BE LIFE-THREATENING.

THE SECOND SET OF PROBLEMS, THOSE ARE ACUTE PROBLEMS. THE CHRONIC PROBLEMS RELATED TO CHEMOTHERAPY HAVE TO DO WITH NERVE DAMAGE. MANY OF OUR CHEMOTHERAPY DRUGS WILL AFFECT OUR NERVOUS SYSTEM AND WE'LL DEVELOP NUMBNESS IN OUR HANDS AND IN OUR FEET AND WE'LL HAVE DIFFICULTY DISTINGUISHING ITEMS WHEN WE TOUCH THEM, WHEN WE PUT OUR SHOES ON, WHEN WE WALK. SOME INDIVIDUALS HAVE DIFFICULTY MAINTAINING THEIR BALANCE. YOU NEED NORMAL NERVES IN YOUR TOES TO BE ABLE TO MAINTAIN YOUR BALANCE. THAT CAN BE AFFECTED.

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THERE'S ALSO POTENTIAL DAMAGE TO THE LIVER, POTENTIAL DAMAGE TO THE KIDNEYS, AND FOR AT LEAST THE ETOPOSIDE, ONE OF THE DRUGS THAT SHE RECEIVED, WE'RE NOW LEARNING THAT IT ALSO HAS A POTENTIAL DAMAGE OF DEVELOPING LEUKEMIA DOWN THE ROAD.

SO THERE'S A WHOLE HOST OF THINGS THAT CAN HAPPEN TO OUR PATIENTS WHO ARE RECEIVING CHEMOTHERAPY AS A GROUP OF DRUGS.

Q. PLAINTIFF'S EXHIBIT 45, A TWO-PAGE REPORT DATED 3-4-98, WHAT DOES THIS REPORT REFLECT?

A. THE FIRST TREATMENT THAT MS. HENLEY RECEIVED WAS GIVEN AS AN INPATIENT IN THE HOSPITAL. AND THIS IS THE ADMITTING HISTORY AND PHYSICAL THAT IS REQUIRED BY THE JOINT COMMISSION FOR THE ACCREDITATION OF HOSPITALS FOR ANYONE WHO IS ADMITTED AS AN INPATIENT TO THE HOSPITAL. IT IS BASICALLY A SUMMARY OF THE PATIENT'S HISTORY, PHYSICAL EXAMINATION AND TREATMENT PLAN.

Q. AND SOMETIMES CHEMOTHERAPY IS DONE IN YOUR OFFICE?

A. THE MAJORITY OF THE CHEMOTHERAPY IS GIVEN TO THE PATIENT IN THE MOST CONVENIENT SETTING FOR THE PATIENT. IT MAY BE THE OFFICE. IT MAY BE THE HOSPITAL. IT COULD BE AT HOME.

Q. AND WAS THERE A PARTICULAR REASON THAT MS. HENLEY'S WAS DONE IN THE HOSPITAL?

A. YES. THE AVAILABILITY OF HER MEDICATIONS.

Q. THE "HISTORY OF THE PRESENT ILLNESS" NOTES THAT "SHE HAS HAD SOME MILD EPISODES OF HEMOPTYSIS"?

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A. YES.

Q. AND THAT WAS A REFERENCE TO THERE BEING TIMES

WHEN SHE COUGHED UP BLOOD?
A. THAT AND THE FACT THAT SHE WAS SEEN IN THE EMERGENCY ROOM APPROXIMATELY FOUR DAYS AFTER HER INITIAL VISIT TO OUR OFFICE, WHEN SHE WAS THEN SEEN IN THE EMERGENCY ROOM WITH AN EPISODE OF COUGHING UP BLOOD.
Q. AND THE RECORDS FROM THE EMERGENCY ROOM VISIT ARE SOMETHING THAT IS CONTAINED WITHIN YOUR RECORDS IN EXHIBIT 46?
A. I WOULD HAVE TO LOOK, BUT IT IS IN MY ORIGINAL MEDICAL RECORDS AT THE OFFICE.
Q. SHE NOTES A MILD DISCOMFORT IN THE LEFT POSTERIOR CHEST?
A. BY THE TIME SHE WAS COMING INTO THE HOSPITAL, SHE HAD SEVERAL NEW COMPLAINTS. ONE COMPLAINT IS SHE WAS HAVING DIFFICULTY SWALLOWING AND THE SECOND COMPLAINT IS A MILD DISCOMFORT IN THE LEFT POSTERIOR CHEST. THAT MEANS IN THE LEFT SIDE OF HER CHEST AND DEEP INSIDE.
Q. THIS WAS A PAIN SHE WAS FEELING?
A. THAT IS CORRECT.
Q. SOME OF THE PHYSICAL EXAMINATION INCLUDES THINGS LIKE TAKING OF THE PATIENT'S WEIGHT?
A. THAT IS CORRECT.
Q. AND IS THAT SOMETHING JUST TO DRIVE US ALL CRAZY SO WE CAN SAY "I'M GOING TO GO TO A DIET DOCTOR," OR IS THERE A REASON WHY IT'S DONE SPECIFICALLY WITH RESPECT TO WHAT YOU DO?

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A. IN TERMS OF CANCER THERAPY, WE DECIDE THE AMOUNT OF MEDICATION THAT A PATIENT RECEIVES BASED ON A FORMULA CALLED THE BODY SURFACE AREA. AND WHAT THAT DOES IS IT TELLS US HOW BIG WE ARE, AND IT'S A COMBINATION OF HOW MUCH WE WEIGH AND HOW TALL WE ARE. SO THE EXACT AMOUNT OF MEDICATION IS THE AMOUNT OF A DRUG -- AND FOR THE SAKE OF DISCUSSION, WE CAN SAY 100 UNITS OF A DRUG PER METER SQUARED. SO THAT IF YOU'RE- ARE TWO METERS SQUARED, YOU WOULD RECEIVE 200 UNITS OF A DRUG. IF YOU'RE 1.5 METERS SQUARED, YOU WOULD RECEIVE 150 MILLIGRAMS OF A DRUG.
SO BASICALLY EVERY PATIENT RECEIVES A DIFFERENT AMOUNT OF DRUG BASED ON THEIR BODY SIZE. AND THAT'S HOW WE USE THE WEIGHT.
THE SECOND ISSUE ABOUT USING WEIGHT IS IT IS PROBABLY OUR MOST IMPORTANT VITAL SIGN. MANY OF OUR PATIENTS, IF THE CANCER IS PROGRESSING, THEY LOSE WEIGHT AND WHEN YOU LOSE WEIGHT, YOU LOSE MUSCLE AND YOU LOSE FUNCTION. AND THE WEIGHT LOSS COULD BE DUE FROM THE CANCER ITSELF OR IT COULD BE DUE FROM THE EFFECTS OF OUR TREATMENT. IF WE'RE CAUSING THE PATIENT TO HAVE A LOT OF SORES IN THE MOUTH OR ABDOMINAL PAIN OR DIARRHEA FROM OUR TREATMENTS, THEY ARE UNABLE TO MAINTAIN ADEQUATE NUTRITION. SO IT HELPS US GET A BETTER IDEA HOW WELL THE PATIENT IS DOING.
Q. AND THE TREATMENT WAS GIVEN TO MS. HENLEY ON THIS FIRST OCCASION ON 3-4-98?
A. THAT IS CORRECT.
Q. AND SHE TOLERATED IT?

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A. SHE TOLERATED IT RELATIVELY WELL.
Q. AND WHAT DOES THAT MEAN?
A. THE WORD "TOLERATING-" IT WELL" HAS SEVERAL COMPONENTS. IN THE NOT SO DISTANT PAST, IF WE WERE TO GIVE SOMEONE CHEMOTHERAPY, THEY WOULD IMMEDIATELY OR WITHIN A

SHORT ORDER WOULD BEGIN TO VOMIT. ONE OF THE SIDE EFFECTS OF OUR DRUGS IS THAT THEY ACT ON A SPECIFIC AREA OF THE BRAIN THAT CAUSES SEVERE VOMITING.

FORTUNATELY, THERE ARE NEW DRUGS THAT WE USE TO TRY TO PREVENT THAT FROM HAPPENING. AND THAT IS CALLED THE IMMEDIATE EFFECT OF CHEMOTHERAPY. RARELY ONE CAN HAVE AN ALLERGIC REACTION TO THE DRUGS. BUT VOMITING IS THE MAIN CONCERN AND THAT CAN HAPPEN WITHIN MINUTES AFTER SOME DRUGS TO EIGHT TO 12 HOURS LATER.

A CERTAIN NUMBER OF THESE PATIENTS ALSO HAVE WHAT WE CALL DELAYED VOMITING IN THAT THE VOMITING DOESN'T EVEN START FOR HOURS AFTER THEY ARE FINISHED AT THERAPY. SO WE KEEP IN CONTACT WITH THEM AND WE GIVE THEM MEDICATIONS TO TRY TO ANTICIPATE THE PROBLEM.

THE THIRD COMPONENT OF THE TOXICITY OF OUR TREATMENTS HAS TO DO WITH, AS PREVIOUSLY MENTIONED, PROBLEMS WITH THE PATIENT'S BLOOD COUNTS. AND THAT USUALLY HAPPENS AT APPROXIMATELY DAY SEVEN THROUGH DAY 14 OF THEIR THERAPY. THAT IS WHEN THEY'RE MOST AT RISK FOR BLEEDING OR HEMORRHAGING, AND THAT IS WHEN THEY BEGIN TO FEEL A MODERATE TO SEVERE AMOUNT OF FATIGUE FROM HAVING LOW BLOOD COUNTS.

Q. IN THE COURSE OF THIS TREATMENT, HOW MANY DAYS DID THIS GO ON FOR ON THE FIRST TREATMENT?

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A. THE CHEMOTHERAPY IN HER PARTICULAR TREATMENT PROGRAM WAS FOR THREE CONSECUTIVE DAYS. WE WOULD TRY TO GIVE THE MEDICATION EVERY 21 DAYS. AND THE GOAL IS TO GIVE IT ON SCHEDULE AT THE MAXIMUM DOSE THAT THE PATIENT CAN TOLERATE.

Q. SO SHE HAD THREE DAYS. AND THEN THE CONCEPT WAS YOU'D FOLLOW UP WITH HER TO SEE HOW SHE DID AFTER THAT; IS THAT RIGHT?

A. THAT IS CORRECT.

Q. AND THEN ASSUMING SHE DID OKAY WITH THAT 21 DAYS, LATER YOU'D START THE NEXT CYCLE?

A. THAT IS CORRECT.

Q. NOW, IF YOU WOULD LOOK AT EXHIBIT 46, DR. MENA. THERE ARE SOME NUMBERS STAMPED IN THE RIGHT-HAND CORNER, THE LOWER RIGHT-HAND CORNER. SO THAT IF I REFER TO ONE NUMBER, IT WILL BE TO THAT NUMBER TO HELP US ALL SEE WHAT PAGE WE'RE ON.

WITH THE EXCEPTION OF THE MOST RECENT RECORDS THAT YOU INDICATED WERE NOT INCLUDED HERE, THE MORE RECENT RECORDS ARE AT THE TOP OF EXHIBIT 46 AND IT GOES BACK TO OLDER RECORDS; IS THAT CORRECT?

A. THAT APPEARS TO BE THE CASE.

Q. IF WE GO TO PAGE 46, ARE THESE REFLECTIONS OF THE OFFICE VISITS OR TREATMENT RECORDS?

A. YES, THEY ARE.

Q. AND THERE'S A NOTATION FOR 4-9-98?

A. THAT IS CORRECT.

Q. AND WAS THAT THE SECOND CYCLE?

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A. THAT WAS DAY 14 OF CYCLE TWO. THAT MEANS AFTER YOU STARTED THE SECOND THREE-DAY CYCLE OF CHEMOTHERAPY, THIS WOULD BE THE 14TH DAY OF THE SECOND CYCLE OF CHEMOTHERAPY.

Q. AND THAT'S HOW YOU NUMBER THE TIME, BOTH THE CYCLE AND THE NUMBER OF DAYS FROM THAT START OF THAT CYCLE?

A. THAT IS CORRECT.

Q. AND IT NOTES THAT SHE WAS ALSO ON DAY FOUR OF THIS COURSE OF RADIATION. DO YOU DO THE RADIATION IN YOUR

OFFICE?
A. NO. IN PATRICIA'S CASE, THE RADIATION WAS GIVEN BY A RADIATION ONCOLOGIST. THAT IS A CANCER SPECIALIST JUST LIKE I AM, BUT HE OR SHE WOULD SPECIALIZE IN THE TREATMENT OF CANCER WITH RADIATION. AND SHE RECEIVED HER RADIATIONS AT OUR PROVIDENCE SAINT JOSEPH'S MEDICAL CENTER.
Q. AND THE RADIATION ONCOLOGIST, WAS THAT DR. MALCOMB?
A. YES, IT WAS.
Q. AND IN TERMS OF THE RADIATION, SHE'S GETTING THIS AT THE SAME TIME THAT SHE'S GOING THROUGH CYCLES OF CHEMOTHERAPY?
A. THAT IS CORRECT.
Q. AND ON THE APRIL 9TH OF '98, SHE INDICATED THAT SHE WAS HAVING DIFFICULTY WITH SWALLOWING?
A. THAT IS CORRECT.
Q. AND WAS THAT SOMETHING THAT RECURRED OR HAPPENED TO PATRICIA ON A NUMBER OF OCCASIONS DURING THE COURSE OF THIS?
A. ONE OF THE MAIN SIDE EFFECTS OF RADIATION IS THAT

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WHATEVER THE AREA IS THAT IS ENCOMPASSED BY THE RADIATION IS RECEIVING THE SAME DOSE. WHERE HER TUMOR WAS, THERE ARE ORGANS IN THERE THAT ARE VERY SENSITIVE TO RADIATION. AND IN THAT AREA IS THE ESOPHAGUS. THAT IS THE TUBE THAT CONNECTS YOUR MOUTH TO YOUR STOMACH. AND THE RADIATION WILL CAUSE DEATH OF THE CELLS THAT LINE THE ESOPHAGUS, SO IT BECOMES RAW AND PAINFUL. IT'S A VERY FREQUENT COMPONENT THAT THE PATIENTS LOSE THEIR APPETITE AND THEY CANNOT EAT. AND WHENEVER WE COMBINE BOTH CHEMOTHERAPY AND RADIATION TOGETHER, THAT IS MADE WORSE.
Q. AND THIS WAS SOMETHING THAT CONTINUED IN MS. HENLEY'S CASE OVER A NUMBER OF THESE CYCLES?
A. THAT IS CORRECT.
Q. NOW, ON THE THIRD PARAGRAPH DOWN, IT INDICATES SHE IS HAVING A VERY NICE RESPONSE TO THE CHEMOTHERAPY. AND THAT'S ALONG THE LINES OF WHAT YOU INDICATED EARLIER, WHAT "RESPONSE" MEANS. BUT IT SAYS: "SHE IS, HOWEVER, MODERATELY NEUTROPENIC AND THROMBOCYTOPENIC." I DID MY BEST.
WHAT DOES THAT MEAN IN LAY TERMS?
A. THAT MEANS THAT HER WHITE BLOOD CELL COUNT WAS LOW AND THAT THE PLATELET COUNT WAS LOW, AND WE WERE BEGINNING TO WORRY ABOUT THE POSSIBILITY OF INFECTIONS AND BLEEDING.
Q. SO THIS IS WHAT YOU WERE TALKING ABOUT GENERALLY EARLIER WAS ACTUALLY HAPPENING TO HER, THAT HER BLOOD WAS BEING AFFECTED?
A. THAT IS CORRECT.

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Q. AND WAS THERE SOME DISCUSSION ABOUT MAYBE HAVING TO DELAY DOING THE NEXT CYCLE?
A. ONE OF THE PROBLEMS WITH CHEMOTHERAPY IS TRYING TO MAKE THE RIGHT DECISIONS. AND IF AN INDIVIDUAL'S BLOOD COUNT BLOOD NUMBERS ARE NOT QUITE TO NORMAL, YOU HAVE TWO OPTIONS. THE FIRST OPTION IS TO REDUCE THE AMOUNT OF DRUG YOU GIVE THE PATIENT. OUR FEAR IS THAT IF WE REDUCE THE DOSE, BUT THE DRUGS BECOME MORE LESS EFFECTIVE.
THE SECOND OPTION IS TO TRY TO DELAY THE DRUGS FOR APPROXIMATELY A WEEK. SINCE THESE TWO CELL TYPES, THE WHITE BLOOD CELLS AND THE PLATELETS TEND TO GROW RAPIDLY, WE

WOULD EXPECT A RECOVERY TO TAKE PLACE. SO IT'S ALWAYS A DIFFICULT JUDGMENT CALL WHETHER TO DELAY IT FOR A WEEK OR TO REDUCE THE AMOUNT OF THE MEDICATION.

A THIRD OPTION IS TO GIVE HER OTHER DRUGS THAT WILL BASICALLY DRIVE HER FACTORY, HER BONE MARROW, TO PRODUCE BLOOD. AND SOMETIMES WE DO THAT TOO.

Q. IF YOU TURN TO EXHIBIT 46, PAGE 42. I GUESS IT WOULD BE 41 AND 42. IS THIS A HISTORY AND PHYSICAL REPORT PREPARED BY YOU?

A. YES, IT IS.

Q. AND WHAT WAS THE COMPLAINING PROBLEM THAT MS. HENLEY HAD AT THIS TIME?

A. SHE FELT AWFUL. SPECIFICALLY, IT IS THE FACT THAT SHE WAS DEHYDRATED AND SHE COULD NOT SWALLOW.

Q. AND DEHYDRATION, HOW DOES THAT AFFECT ONE?

A. MOST 0F OUR BODY IS MADE UP OF BASICALLY WATER AND THE BALANCE OF HOW MUCH WATER WE DRINK OR HOW MUCH WATER

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WE LOSE IS CONTROLLED BY THE KIDNEYS AND THE BRAIN BY CONTROLLING THIRST. WE ALSO LOSE AT LEAST A QUART TO A QUART AND A HALF OF FLUID JUST BY BREATHING AND LOSING SOME IN THE FORM OF SWEAT.

THEREFORE, IF YOU'RE NOT CONSUMING LIQUIDS, YOU WILL CONTINUE TO LOSE FLUID FROM YOUR BODY. YOU ALSO LOSE SOME IN THE STOOL AND YOU WILL LOSE SOME IN THE URINE, EVEN IF YOU'RE NOT DRINKING WATER.

OVER TIME, THAT TENDS TO LOWER YOUR BLOOD PRESSURE. AND SOMETIMES IF YOU STAND UP AND YOU'RE DEHYDRATED, YOU'LL FAINT BECAUSE THE HEART IS SIMPLY NOT ABLE TO MAINTAIN YOUR BLOOD PRESSURE AND PUMP THE BLOOD TO THE BRAIN.

AND ONE OF THE THINGS WE MEASURE AGAIN IS WEIGHT. IF WE CANNOT EAT FOR 24 HOURS, OUR WEIGHT DOESN'T CHANGE MUCH. IF WE DON'T DRINK FOR 24 HOURS, WE WOULD LOSE TWO OR THREE POUNDS. IT'S NOT REAL WEIGHT. IT'S WATER WEIGHT. AND THAT IS ONE OF THE REASONS WE WEIGH THE PATIENTS FREQUENTLY IS TO GET A BETTER EVALUATION OF THEIR HYDRATION.

NORMALLY, PATRICIA WOULD COME INTO THE OFFICE AND WE WOULD GIVE HER SOME INTRAVENOUS FLUIDS. IT IS ALWAYS BETTER TO BE AT HOME, WHENEVER POSSIBLE. IN THIS PARTICULAR INSTANCE, WE FELT IT WAS UNSAFE FOR HER TO BE HOME AND WE ELECTED TO ADMIT HER TO THE HOSPITAL.

Q. AND YOU NOTE THAT SHE HAS A SIGNIFICANT HISTORY OF TOBACCO USAGE?

A. YES.

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Q. AND ALSO THAT SHE HADN'T HAD ANY FURTHER HEMOPTYSIS OR COUGHING UP OF BLOOD SINCE BEING STARTED ON CHEMOTHERAPY. WHAT'S THE SIGNIFICANCE OF THAT?

A. THE ASSUMPTION WAS THAT THE COUGHING UP OF BLOOD WAS RELATED TO THE CANCER THAT HAD STARTED IN THE LUNGS. AND NORMALLY, IT'S LIKES YOU HAVE AN OPEN SORE AND IT COULD EAT INTO A SMALL BLOOD VESSEL AND YOU BLEED. THE ASSUMPTION HERE AFTER HAVING HAD I BELIEVE THREE CYCLES OF CHEMOTHERAPY IS THAT WE HAVE KILLED A SIGNIFICANT AMOUNT OF CANCER AND THAT THE NORMAL LINING OF THE LUNG HAD COVERED THE SORE OR THE ULCER, AND THUS THE BLEEDING WOULD HAVE STOPPED.

Q. AND THAT WOULD BE THROUGH A SCARRING PROCESS?

A. HEALING.

Q. SCARRING IS GOOD?

A. SCARRING IS GOOD.
Q. SO SHE WAS ADMITTED TO THE HOSPITAL AT THAT TIME. WAS SHE ALSO COMPLAINING THAT SHE HAD SEVERE PAIN IN SWALLOWING?
A. ABSOLUTELY.
Q. AND SHE COULDN'T DRINK ANY LIQUIDS?
A. WE COULD NOT MAINTAIN HER HYDRATION AS AN OUTPATIENT.
Q. AND SHE WAS DISCHARGED TWO DAYS LATER. THAT WOULD BE ON PAGE 39?
A. PAGE 39 IS WHAT IS CALLED A DISCHARGE SUMMARY. WHENEVER AN INDIVIDUAL IS ADMITTED TO THE HOSPITAL, AT TIME OF RELEASE FROM THE HOSPITAL THE SAME ORGANIZATIONS THAT TELL US WE HAVE TO DO A HISTORY AND A PHYSICAL MANDATE THAT

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A DISCHARGE NOTE BE DICTATED. THE DISCHARGE NOTE USUALLY CONTAINS A SUMMARY OF THE HOSPITAL COURSE AND ANY PROCEDURES DONE IN THE HOSPITAL, AND THIS IS A SUMMARY THEREOF.
Q. AND IN ADDITION TO DISCHARGING HER ON SOME MEDICATIONS, YOU ALSO GAVE HER SOME MEDICATION FOR PAIN?
A. THAT IS CORRECT.
Q. AND FOR SLEEP?
A. THAT IS CORRECT.
Q. AND ON PAGE 38, IS THERE A NOTATION THAT RADIATION HAD TO STOP OR BE STOPPED?
A. (EXAMINING) THAT IS CORRECT.
Q. AND WHY WAS THAT?
A. THE SEVERITY OF HER PAIN WITH SWALLOWING.
Q. AND AGAIN, SHE WAS GIVEN A STRONGER MEDICATION FOR PAIN?
A. AT THAT TIME -- THIS IS APRIL 28TH, 1998 -- SHE WAS STILL FOUND TO BE AGAIN DEHYDRATED. AND ON THIS OCCASION, WE GAVE HER INTRAVENOUS FLUIDS IN THE OFFICE AND WE CHANGED HER MEDICATIONS, INCLUDING A MUCH STRONGER PAIN MEDICATION FOR HER PAIN.
Q. AND THIS PAIN PERSISTED FOR AWHILE?
A. YES, IT DID.
Q. AND IF YOU TURN TO PAGE 37. WE'RE UP TO MAY NOW?
A. PAGE 36 AND 37 OR 37 ALONE?
Q. PAGE 36 AND 37, YES. IT'S A TWO-PAGE HISTORY AND PHYSICAL?
A. THAT IS CORRECT.
Q. AND WHAT WERE THE COMPLAINTS THAT PATRICIA HAD AT

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THE TIME?
A. AT THE TIME, AGAIN THAT SHE WAS DEHYDRATED, THAT SHE WAS HAVING PAIN IN THE ESOPHAGUS.
Q. AND SHE WAS UNABLE TO EAT?
A. SHE AGAIN WAS UNABLE TO EAT AND UNABLE TO SWALLOW.
Q. DID YOU HAVE TO ADMIT HER AGAIN FOR INTRAVENOUS HYDRATION?
A. THAT IS CORRECT.
Q. AND WAS SHE GIVEN MORPHINE FOR PAIN?
A. I BELIEVE THAT IS CORRECT. WE WOULD GIVE HER PAIN MEDICATIONS INTRAVENOUSLY WHEN SHE WAS UNABLE TO SWALLOW.
Q. NOW, JUST SO THAT WE CAN ALL GET A PERSPECTIVE -- I'M NOT GOING TO TAKE YOU THROUGH EVERY PAGE OF THIS.
THE COURT: CAN YOU COMPLETE YOUR EXAMINATION BEFORE WE NEED TO TAKE OUR MORNING RECESS?

MS. CHABER: AT WHAT TIME WERE YOU GOING TO BREAK?
THE COURT: HOW MUCH LONGER DO YOU HAVE?
MS. CHABER: 15 MINUTES.
THE COURT: LET'S GO ON AND COMPLETE YOUR EXAMINATION.
JURORS, WHAT I MAY DO TODAY, IF IT'S NOT INCONVENIENT FOR EVERYBODY, I MAY TAKE A RECESS IN 15 MINUTES AND THEN GO TO 12:15 OR SOMETHING BEFORE WE GO TO LUNCH, SO WE CAN GET A DECENT SIZE SEGMENT IN BEFORE WE BREAK FOR LUNCH.

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WHY DON'T YOU GO AHEAD, IF YOU CAN COMPLETE IN 15 MINUTES. THEN WE'LL TAKE A SHORT 15-MINUTE RECESS AND THEN WE'LL GO TO PROBABLY AROUND 12:15 AND WE'LL BREAK THEN FOR LUNCH.

MS. CHABER: Q. WITH RESPECT TO MS. HENLEY'S CONTINUED TREATMENTS, ON PAGE 34 WE'RE NOW AT MAY 5TH. WAS THIS SUBSEQUENT TO HER BEING IN THE HOSPITAL AGAIN?

A. I BELIEVE THAT SHE WENT HOME AND HAD TO COME BACK INTO THE HOSPITAL. I CANNOT SUSTAIN HER AT HOME.

Q. AT THIS POINT IN TIME, HOW MANY DOSES OF RADIATION HAD SHE HAD?

A. I CAN'T TELL YOU EXACTLY. THERE'S USUALLY A COMPANION SHEET CALLED A FLOW SHEET AND IT HAS THE AMOUNT OF RADIATION OR HER CHEMOTHERAPY. I BELIEVE THAT AT THAT TIME IT WAS DECIDED THAT RADIATION WOULD BE STOPPED, BUT I WOULD HAVE TO LOOK AT OTHER PARTS OF THE MEDICAL RECORD.

Q. LET ME JUST DIRECT YOU TO THE "HISTORY OF PRESENT ILLNESS," THE FIRST PARAGRAPH. IT SAYS "ABOUT EIGHT DOSES OF RADIATION"?

A. THAT IS CORRECT.

Q. NOW, SHE HAD AND AN ADDITIONAL PROBLEM ADDITIONAL TO HER SWALLOWING?

A. AT THIS TIME, SHE HAD DEVELOPED A LOT OF BRUISING.

Q. NOW, WHAT IS THAT RELATED TO?

A. BASICALLY, IT'S A PURPLE SPOT ON THE SKIN THAT WOULD SUGGEST THAT YOU ARE BLEEDING INTO THE TISSUES. AND IN THIS PARTICULAR CASE, HER BLOOD COUNTS WERE AGAIN

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EXCEEDINGLY LOW. THE HEMOGLOBIN, WHICH LOOKS AT THE RED BLOOD CELLS OR CARRIES OXYGEN, IN A WOMAN HER AGE WE EXPECT THE NORMAL TO BE 12 AND IN HER WAS EIGHT. BASICALLY, IT WAS DOWN FOUR GRAMS OF HEMOGLOBIN OR ONE-THIRD OF THE NORMAL AMOUNT. THE PLATELET COUNT WAS 21,000. A NORMAL INDIVIDUAL WOULD HAVE GREATER THAN 150,000. HERS WERE 21,000.

AT THAT POINT, SHE WAS BEGINNING TO DEVELOP SPONTANEOUS BLEEDING IN HER TISSUES. THE BLOOD COUNT WAS 1,500. MOST OF US WOULD HAVE IN THE RANGE OF OVER 4,000. THESE COUNTS WERE LOW AND PROBABLY THE RESULT OF THE CHEMOTHERAPY.

Q. AND WAS SHE IN AUGUST HOSPITALIZED AGAIN AT THE EMERGENCY ROOM OR DID SHE DO TO THE EMERGENCY ROOM? PAGE 16.

A. 16?

Q. 16.

THESE RECORDS ARE NOT EXACTLY HOW YOU KEEP YOUR CHART; CORRECT?

A. THAT IS CORRECT.

Q. IF YOU HAD YOUR OWN CHART IN FRONT OF YOU, I

WOULDN'T HAVE TO DIRECT YOU. YOU'D BE ABLE TO FIND THESE THINGS?
A. ALL OF US ARE PICKY AS TO HOW WE KEEP OUR MATERIALS. THESE WERE EMERGENCY ROOM EVALUATIONS.
Q. AND WAS THERE AN X-RAY THAT WAS TAKEN OF HER CHEST?
A. THERE WAS AN X-RAY DONE OF HER CHEST. I BELIEVE IT WAS SOMEWHERE AT MIDNIGHT. AND THE PHYSICIAN INTERPRETED

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IT AS SHOWING "A LEFT PERIHILAR MASS WITH LEFT UPPER LOBE INFILTRATES." AN INFILTRATE SIMPLY IS A CHANGE ON THE X-RAY. IT COULD MEAN MANY DIFFERENT THINGS.
Q. AND ON PAGE 15 -- WHICH IS A CONTINUATION OF HER REPORT THAT BEGINS ON PAGE 13?
A. YES.
Q. -- IS THERE A REFERENCE TO AN X-RAY SHOWING "INCREASED MARKINGS IN THE LEFT UPPER LOBE WHICH MOST LIKELY REPRESENT HER UNDERLYING LUNG CANCER"?
A. THAT IS CORRECT. THAT'S WHAT IT STATES.
Q. AND ON THE HISTORY IN THIS REPORT, IT'S NOTED THAT "SHE WAS A SMOKER IN THE PAST"? IT'S ON PAGE 13, THE FIRST PAGE OF THE REPORT.
A. (EXAMINING) YES, THAT IS CORRECT.
Q. AND WHY IS THAT IMPORTANT TO NOTE ON RECORDS?
A. THE HISTORY OF SMOKING IS IMPORTANT BECAUSE IT WOULD MAKE -- IF YOU HAVE BEEN EXPOSED TO TOBACCO, YOU WOULD HAVE -- ESPECIALLY IF YOU CONTINUE TO SMOKE, YOU WOULD HAVE DIFFICULTY CLEARING SECRETIONS FROM THE LUNG, YOUR ABILITY TO PRODUCE MUCUS MAY CHANGE AND YOU WILL BE MORE SUSCEPTIBLE TO INFECTIONS. IT ALSO WOULD INDICATE THAT THERE MAY OR MAY NOT BE DAMAGE TO THE LUNGS FROM PREVIOUS UTILIZATION OF TOBACCO.
Q. NOW, THE CHEMOTHERAPY AND THE RADIATION THERAPY, WERE THE CYCLES COMPLETED?
A. SHE COMPLETED ALL HER CHEMOTHERAPY. THE RADIATION WAS NOT COMPLETED.
Q. AND WHY WAS THAT?

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A. I WAS AFRAID I WAS GOING TO KILL HER.
Q. AND WHAT DO YOU MEAN BY THAT?
A. THE TOXICITY WAS OVERWHELMING.
Q. DID SHE DEVELOP SOMETHING CALLED THRUSH?
A. YES.
Q. AND WHAT IS THRUSH?
A. THRUSH IS THE DEVELOPMENT OF YEAST IN THE MOUTH AND THE SOFT TISSUES OF THE ESOPHAGUS. AND AGAIN, THAT USUALLY HAPPENS AS A CONSEQUENCE OF SOME OF OUR DRUGS. AND BECAUSE WE HAVE ALTERED THE NORMAL LINING OF THE ESOPHAGUS, YEAST TENDS TO GROW. IT'S A COMMON COMPLICATION FOR PATIENTS WHO HAVE HAD RADIATION TO THE ESOPHAGUS.
Q. AND HOW DOES IT AFFECT THE INDIVIDUAL?
A. IT CHANGES YOUR PERCEPTION OF TASTE AND IT CAN CAUSE PAIN.
Q. AND HAD MS. HENLEY'S WEIGHT GONE DOWN TO AS MUCH AS -- FROM THE 124 RANGE DOWN TO AS MUCH AS 100 OVER THE COURSE OF THE CHEMOTHERAPY AND RADIATION?
A. THAT IS CORRECT.
Q. AND YOU INDICATED THAT YOU SAW HER AGAIN IN DECEMBER. THAT'S NOT REFLECTED HERE IN THESE RECORDS. WHEN YOU SAW HER IN DECEMBER, HOW WAS SHE DOING?
A. IN MY VISIT WITH HER IN DECEMBER, SHE WAS VERY,

VERY FATIGUED AND WAS HAVING SOME DIFFICULTIES ACCOMPLISHING TASKS.

THE VISIT IN DECEMBER WAS UTILIZED TO LET HER KNOW THAT THE DIAGNOSTIC STUDIES THAT WE HAD ORDERED SHOWED THAT THE CANCER WAS NOT PRESENT. WE CALL THAT BEING IN

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REMISSION. AND OUR PLAN AT THAT POINT WAS TO DISCUSS WITH HER FINISHING HER TREATMENT, WHICH WOULD HAVE INCLUDED THE DELIVERY OF RADIATION TO THE BRAIN.

IF YOU RECALL, WE TALKED ABOUT CERTAIN SANCTUARIES WHERE THE CHEMOTHERAPY DOES NOT TRAVEL, AND THE BRAIN HAPPENS TO BE ONE OF THEM. OUR PLAN WAS TO DISCUSS WITH HER AND BEGIN PLANNING FOR RADIATION TO THE BRAIN. WE ELECTED NOT TO PURSUE IT AT THAT TIME BECAUSE OF HER TREMENDOUS SENSE OF FATIGUE.

Q. AND WHAT DO YOU ATTRIBUTE THE FATIGUE TO?

A. OUR TREATMENTS.

Q. IS THERE A POINT IN TIME WHERE YOU WILL NEED TO -- STRIKE THAT. HOW FAR FROM THE LAST CYCLE OF TREATMENT WAS MS. HENLEY WHEN YOU SAW HER IN DECEMBER?

A. OKAY. AGAIN, I DON'T HAVE THE FLOW SHEETS. I BELIEVE THAT HER LAST TREATMENT WAS SOMETIME IN SEPTEMBER. I WOULD HAVE TO GO THROUGH THE MEDICAL RECORDS TO FIND IT. SO NORMALLY WE WOULD HAVE EXPECTED APPROXIMATELY THREE MONTHS AFTER FINISHING THE CHEMOTHERAPY FOR INDIVIDUALS TO HAVE RECOVERED ENOUGH THAT WE CAN DO SOMETHING ELSE.

Q. AND IN DECEMBER, MS. HENLEY HAD NOT REACHED THAT POINT?

A. IN DECEMBER, SHE HAD NOT REACHED THAT POINT.

Q. AND IN TERMS OF FATIGUE, IT CAN RELATE TO THE CHEMOTHERAPY. CAN IT RELATE TO OTHER THINGS?

A. FATIGUE CAN RELATE TO A VARIETY OF THINGS. IT CAN RELATE TO A DIMINISHED LUNG CAPACITY, THE ABILITY TO BREATHE AND THAT COULD BE FROM THE TREATMENTS, INCLUDING THE

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RADIATION. IT COULD BE FROM YOUR HEMOGLOBIN, YOUR RED BLOOD COUNT NOT BEING QUITE UP TO PAR.

IT COULD BE TOTALLY NONSPECIFIC IN TERMS OF HOW YOU FEEL ABOUT YOURSELF. IT COULD ALSO BE SOME LEVEL OF DEPRESSION, GIVEN ALL THE BODY CHANGES THAT PEOPLE GO THROUGH IN OUR TREATMENTS. HOWEVER, IN THE AGGREGATE, MOST OF THEM IMPROVE WITHIN THREE MONTHS AFTER TERMINATING CHEMOTHERAPY OR RADIATION.

Q. IS THE FATIGUE SOMETHING YOU WATCH TO SEE IF IT CONTINUES?

A. THE QUESTION IS AN IMPORTANT ONE, BECAUSE I'M MAKING THE ASSUMPTION THAT THE FATIGUE WAS DUE TO A REVERSIBLE CAUSE, THAT IS LOW BLOOD COUNTS OR THE EFFECTS OF CHEMOTHERAPY OR THE EFFECTS OF RADIATION OR THE EFFECTS OF POOR NUTRITION OR EVEN MUSCLE LOSS. IF WE'RE NOT ACTIVE, WE LOSE MUSCLE BULK AND AS WE LOSE WEIGHT, WE LOSE MUSCLE. SO FATIGUE COULD BE SOMETHING AS SIMPLE AS BEING OUT OF SHAPE DUE TO THE FACT THAT YOU'RE RELATIVELY INACTIVE WHEN YOU'RE BEING TREATED.

HOWEVER, HAVING SAID ALL OF THAT, FATIGUE CAN ALSO BE A MANIFESTATION OF THE CANCER RETURNING. AND IN MY JUDGMENT, I FELT THAT ALTHOUGH IT WAS A LOWER PROBABILITY, IF SHE DOES NOT IMPROVE OR DID NOT IMPROVE IN A SHORT ORDER, WE WOULD HAVE TO REINVESTIGATE WITH X-RAYS OR LABS OR WHATEVER IT WOULD REQUIRE TO ENSURE THAT HER CANCER WAS STILL CONTROLLED.

Q. NOW, IN TERMS OF WHAT IS VISIBLE ON X-RAY OR CT SCAN, HOW HAS MS. HENLEY'S CANCER RESPONDED TO YOUR

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TREATMENTS?

A. THE CANCER HAS MARKEDLY SHRUNKEN. SHE HAS ACHIEVED WHAT WE WOULD CALL A COMPLETE REMISSION. AND BY THAT, WE MEAN THAT ALL OBVIOUS EVIDENCE OF CANCER HAS DISAPPEARED.

Q. DOES THAT MEAN SHE IS CURED?

A. NO, IT DOES NOT. IT SIMPLY MEANS WE FIND NO EVIDENCE OF CANCER.

Q. AND WHAT IS THE PROGNOSIS FOR SOMEONE WHO HAS HAD A SMALL CELL LUNG CANCER TREATED THE WAY MS. HENLEY'S HAS BEEN TREATED AND HAD THE RESPONSE THAT SHE'S HAD OF A COMPLETE REMISSION?

A. IT DEPENDS A LITTLE BIT ON THE SERIES. HOWEVER, IN THE AGGREGATE, WE EXPECT THAT APPROXIMATELY 20 PERCENT OF PEOPLE WITH LIMITED SMALL CELL LUNG CANCER MAY BE FREE OF CANCER BETWEEN THREE AND FIVE YEARS DOWN THE ROAD.

Q. IS SMALL CELL LUNG CANCER SOMETHING THAT IS ULTIMATELY CURED?

A. "CURE" IS A DIFFICULT WORD. I'VE HAD PATIENTS WITH LIMITED SMALL CELL LUNG CANCER WHO RECURRED WITH THE SAME SMALL CELL EIGHT YEARS LATER. HOWEVER, THE PROBABILITY OF THE CANCER COMING BACK DIMINISHES WITH TIME. BECAUSE OF THE REPETITIVENESS OF THE GROWTH OF THIS CANCER, WE SEE MOST RECURRENCES IN THE FIRST TWO OR THREE YEARS.

Q. AND IN TERMS OF MS. HENLEY, CAN YOU STATE WHAT IS PROBABLE FOR HER?

A. ON THE AVERAGE, THEY ARE ALIVE FOR A YEAR AND A HALF TO TWO YEARS. AND IT'S DIFFICULT, VERY DIFFICULT TO

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SAY WHETHER SHE WILL REMAIN DISEASE FREE DOWN THE ROAD. IT'S MUCH TOO EARLY TO TELL. OUR HOPE AND EXPECTATION IS THAT SHE'LL BE ONE OF THE FORTUNATE ONES AND THAT SHE WILL HAVE A PROBABILITY OF BEING FREE OF CANCER IN THE 15 TO 25 PERCENT RANGE, SOMEWHERE IN THERE.

MS. CHABER: THANK YOU.

THE WITNESS: OKAY.

THE COURT: IS THAT IT?

MS. CHABER: YES.

THE COURT: OKAY. JURORS, LET'S TAKE A RECESS TILL 20 MINUTES TO 12:00. AND THEN WE'LL GO UNTIL EITHER THE DEFENSE COMPLETES ITS EXAMINATION OR 12:15. WE'LL SEE IF WE CAN FIND A LOGICAL BREAKING POINT FOR LUNCH.

LET ME JUST ASK FOR A SHOW OF HANDS. DO ANY OF YOU HAVE PROBLEMS STAYING PAST 12:00 O'CLOCK TODAY?

(HAND RAISED)

THE COURT: YES. ONE OF THE JURORS DOES.

ALTERNATE JUROR NO. 4: I HAVE AN APPOINTMENT AT 12:00. I GUESS I CAN RESCHEDULE IT, IF I CAN GET AHOLD OF THEM.

THE COURT: IF IT'S CONVENIENT. WHY DON'T YOU LET US KNOW AFTER THE BREAK IF YOU ARE ABLE TO RESCHEDULE IT. IF YOU ARE, WE'LL GO A FEW MINUTES AFTER. IF NOT, WE'LL BREAK AT 12:00 O'CLOCK. PLEASE CONTINUE TO FOLLOW THE ADMONITION DURING THE RECESS. YOU KNOW IT'S CRITICAL THAT YOU DO THAT. WE'LL SEE YOU BACK AT 20 MINUTES TO 12:00.

(RECESS TAKEN FROM 11:22 TO 11:45 P.M.)

THE COURT: WE'RE BACK ON THE RECORD. LET ME

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ASK OUR JUROR ARE WE OKAY FOR A LATE LUNCH?
ALTERNATE NO. 4: YES, WE ARE, YOUR HONOR.
THE COURT: THANK YOU VERY MUCH.
MR. BARRON.
MR. BARRON: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. BARRON: Q. GOOD MORNING, DOCTOR.
A. GOOD MORNING.
Q. WHAT I WOULD LIKE TO DO IS TALK WITH YOU ABOUT THINGS IN A CERTAIN GENERAL ORDER, IF I CAN. AND I WANT TO KIND OF GIVE A HEADS UP AND TELEGRAPH THAT ORDER FOR YOU SO YOU'LL KNOW WHAT I'M TALKING ABOUT BY SUBJECT MATTER.
I'D LIKE TO FIRST START TO TALK TO YOU ABOUT THINGS CONCERNING MS. HENLEY'S CURRENT STATUS. IT'S SORT OF THE AREA YOU JUST LEFT OFF WITH BEFORE WE TOOK OUR BREAK.
THEN I'D LIKE TO NEXT TALK WITH YOU ABOUT HER TREATMENTS OVER TIME FROM THE TIME YOU FIRST GOT INVOLVED, MAYBE EVEN A LITTLE BIT BEFORE, UP TO THE PRESENT.
AND LAST, I WANT TO TALK ABOUT SOME OF THE FACTS AND CIRCUMSTANCES OF HER CASE WHICH EITHER TEND TO SUPPORT OR TEND TO NOT SUPPORT THE QUESTION OF WHETHER HER CANCER STARTED IN THE LUNG.
MS. CHABER: I'M GOING TO OBJECT, YOUR HONOR, TO THIS SPEECH.
THE COURT: SUSTAINED. WE DON'T NEED THIS. WE SHOULD PROCEED BY QUESTION AND ANSWER.
MR. BARRON: ALL RIGHT. THANK YOU, YOUR HONOR.

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Q. LET ME START WITH THE FIRST AREA, IF I CAN, WITH YOU. AND BY THE WAY, I DON'T WANT THIS TO BE A MEMORY TEST. DO YOU STILL HAVE THE RECORDS BEFORE YOU?
A. I HAVE EXHIBITS 44, 45 AND 46.
Q. OKAY. AND INCIDENTALLY, AS WE TALK ABOUT HER CURRENT STATUS, EXHIBIT 46, THE PLAINTIFF'S EXHIBIT, ENDS ON WHAT DATE?
A. THE LAST ENTRY IN FRONT OF ME IS NOVEMBER 17TH, 1998.
Q. NOW, THAT'S LISTED AS PAGE 3 HERE AT THE BOTTOM, THE NUMBERING ON BOTTOM. HAVE YOU ACTUALLY DEVELOPED A RECORD SINCE THAT TIME?
A. THERE IS AN ENTRY IN DECEMBER THAT IS NOT HERE, AND I SAW MS. HENLEY APPROXIMATELY 48 HOURS AGO.
Q. I THINK I HAVE THAT ENTRY. DO YOU HAVE YOUR RECORDS WITH YOU, DOCTOR, SO WE COULD TALK ABOUT THAT RECORD AND THE MOST CURRENT STATUS?
A. THE LAST RECORD THAT I HAVE HERE IN FRONT OF ME IS NOVEMBER 17, 1998.
Q. YOU DON'T HAVE YOUR OWN RECORD FOR DECEMBER WITH YOU?
A. I WAS NOT ASKED TO BRING IT.
MS. CHABER: I JUST WAS MISSING PAGE 2. SO THAT WAS ALL I NEEDED.
MR. BARRON: HERE IS ONE FOR THE COURT. WHAT I'D LIKE TO DO IS INSTEAD OF GIVING YOU THE WHOLE STACK AGAIN, LET ME JUST PULL OUT THE PAGE NUMBER I'M INTERESTED IN, IF THAT IS ACCEPTABLE, YOUR HONOR.

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THE COURT: DO YOU WANT TO HAVE THAT MARKED FOR IDENTIFICATION?

MR. BARRON: YES. I BELIEVE THAT'S THE ONE.
THE CLERK: DO YOU WANT THIS MARKED?
MR. BARRON: YES.
MS. CHABER: DOES IT HAVE A BATES NUMBER?
MR. BARRON: YES. AT THE BOTTOM RIGHT-HAND CORNER -- IF I MAY, TATSUO. I'M SORRY. AT THE BOTTOM RIGHT-HAND CORNER -- WELL, THE PHOTOCOPY IS KIND OF POOR. IT LOOKS LIKE 0008 SOMETHING. IT'S THE ONE THAT WE HAD OF DECEMBER.
MS. CHABER: BUT WHERE IT IS?
THE COURT: WHY DON'T YOU JUST SHOW IT TO HER.
MS. CHABER: I'M MISSING THAT PAGE. THAT'S FINE.
MR. BARRON: OKAY.
THE CLERK: DO YOU HAVE A COPY FOR THE JUDGE?
MR. BARRON: YES.
THE CLERK: DEFENDANT'S EXHIBIT 2799.
(DOCUMENT MORE PARTICULARLY DESCRIBED IN THE INDEX MARKED FOR IDENTIFICATION DEFENDANT'S EXHIBIT # 2799)
MR. BARRON: IT'S 89, FOR THE RECORD.
THE COURT: FOR THE RECORD, THIS IS BEING MARKED AS 2799 FOR IDENTIFICATION?
MR. BARRON: YES.
Q. OKAY. DID YOU MAKE A RECORD OF THE VISIT JUST

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RECENTLY WITH HER?
A. THE ONE ON THE 8TH OF DECEMBER OR THE 19TH? IT'S BEEN DICTATED. I HAVE NOT AUTHENTICATED IT YET.
Q. FIRST OF ALL, YOU MENTIONED THAT MS. HENLEY'S CANCER HAS FORTUNATELY GONE INTO REMISSION?
A. THAT'S CORRECT.
Q. THAT'S COMPLETE REMISSION?
A. AS BEST WE CAN TELL.
Q. AND IN OTHER WORDS, YOUR TREATMENTS HAVE ACCOMPLISHED A COMPLETE RESPONSE?
A. THAT IS CORRECT.
Q. AND ONE OF THE THINGS YOU'VE LOOKED AT IS THE STUDIES TO SEE WHETHER OR NOT THE CANCER REAPPEARED. SO YOU'VE LOOKED AT BONE SCANS?
A. I BELIEVE THAT'S CORRECT.
Q. AND CT SCANS OF THE CHEST?
A. THAT IS CORRECT.
Q. AND THE ABDOMINAL AND PELVIC AREA?
A. I BELIEVE THAT'S CORRECT.
Q. AND THE BRAIN?
A. I BELIEVE THAT'S CORRECT.
Q. AND IS IT CORRECT THAT AT THIS POINT, THERE IS NO INDICATION AT ALL OF ANY REOCCURRENCE OF HER CANCER EXCEPT TO THE EXTENT THAT THE QUESTION OF FATIGUE MAY RAISE ANY ISSUES AT ALL?
A. THAT IS CORRECT. HAVING SAID THAT, ON THE CAT SCAN, THERE ARE SOME AREAS WHICH MOST LIKELY INDICATE CHANGES FROM RADIATION RATHER THAN CANCER, BUT THERE IS NO

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WAY TO BE 100 PERCENT SURE.
Q. AND THE REASON THOSE CHANGES APPEAR TO BE FROM RADIATION IS BECAUSE AT THE LOCATION WHERE THEY'RE SEEN, IT HAPPENS TO BE THE EXACT LOCATION WHERE THE BEAMS FROM THE MACHINE GO WHEN THEY RADIATE SOMEBODY'S CHEST IN THAT AREA?

A. THAT IS CORRECT.
Q. AND THEY SEEM TO FOLLOW THAT PATTERN OF THAT RADIATION?
A. THAT IS CORRECT.
Q. NOW, IN TERMS OF THE NATURE OF HER FATIGUE, WHEN YOU SAW HER ON DECEMBER 8TH, YOU FOUND THAT ALTHOUGH SHE WAS FATIGUED, MS. HENLEY WAS ABLE TO DO CERTAIN THINGS; CORRECT?
A. THAT IS CORRECT.
Q. AND YOU WANTED TO FIND THIS OUT BECAUSE YOU WANTED TO TRY TO MAKE SURE, IF YOU COULD, THAT THE FATIGUE WAS FROM THE TREATMENTS AND NOT FROM A REOCCURRENCE OF THE CANCER?
A. THAT IS CORRECT.
Q. SO YOU WERE ASSESSING THE DEGREE OF FATIGUE FOR THAT PURPOSE?
A. THAT IS CORRECT.
Q. AND YOU BELIEVED THAT, FOR EXAMPLE, SHE COULD GO OUT TO THE MOVIES?
A. THAT IS CORRECT.
Q. GO OUT TO DINNER?
A. YES.
Q. WATCH TV FOR A FEW HOURS OR SO?
A. YES.

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Q. RIDE AROUND IN A CAR AND GO SHOPPING FOR A FEW HOURS?
A. THAT'S TWO SEPARATE QUESTIONS. SHE COULD RIDE AROUND IN HER CAR. I'M NOT SURE THAT SHE COULD WALK THROUGH A SHOPPING MALL FOR SEVERAL HOURS.
Q. RIDE AROUND IN A CAR AND AT LEAST GO SHOPPING FOR SOME BRIEF PERIOD OF TIME?
A. PROBABLY.
Q. AND DO SOME HOUSEHOLD CHORES, AS LONG AS IT WOULDN'T INVOLVE, SAY, FOR EXAMPLE, HEAVY LIFTING OR GOING AEROBIC?
A. THAT'S PROBABLY CORRECT.
Q. NOW, BECAUSE THERE HAS BEEN NO EVIDENCE IN YOUR MIND OF REOCCURRENCE OF THE CANCER, YOU FELT THAT SHE WAS A CANDIDATE NOW TO UNDERGO THE BRAIN RADIATION; IS THAT RIGHT?
A. THAT IS CORRECT.
Q. AND THAT IS FOR -- I THINK WE'VE HEARD THE TERM PROPHYLACTIC PURPOSES?
A. THAT IS CORRECT.
Q. AND SO THAT MEANS THAT EVEN THOUGH THE BRAIN ISN'T SHOWING ANY CANCER THERE, IF THERE WAS SOME CANCER THERE, YOU'D WANT TO TRY TO GET AT IT WITH THE RADIATION?
A. THAT IS CORRECT.
Q. WHEN WAS THE FIRST TIME THAT YOU DISCUSSED WITH MS. HENLEY THE PROSPECT OF SOME RADIATION TO THE BRAIN PROPHYLACTICALLY?
A. MOST LIKELY ON OUR FIRST VISIT.
Q. AND DID YOU DISCUSS THAT WITH HER ON MORE THAN

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ONE OCCASION THEREAFTER?
A. THAT'S PROBABLY CORRECT. IF I MAY, THE TREATMENT OF ANY DISEASE IS RELATIVELY COMPLICATED. AND THIS IS A RELATIVELY EMOTIONAL ILLNESS. REALLY, ALL ILLNESSES ARE. AND WHAT MOST PATIENTS DON'T LIKE ARE SURPRISES. SO YOU TRY TO INTRODUCE TOPICS REGARDING THEIR CARE THROUGH THE WHOLE LENGTH OF YOUR INTERACTION WITH THEM. AND YOU BEGIN TO PREPARE THEM FOR CERTAIN EVENTS THAT WILL TAKE PLACE DURING

THE MANAGEMENT OF THEIR PROBLEM.
Q. AND THEN WHAT YOU ALLOW THE PERSON TO DO IS TO CONTEMPLATE YOUR RECOMMENDATION AND TO MAKE A DECISION?
A. THAT IS CORRECT.
Q. AND HAS MR. HENLEY DECIDED YET -- I KNOW YOU JUST MET WITH HER. HAS SHE DECIDED TO FOLLOW YOUR RECOMMENDATION?
A. THE PLAN RIGHT NOW IS IN APPROXIMATELY TWO WEEKS, SHE WILL BE SEEING THE RADIATION ONCOLOGIST AGAIN SO THAT WE CAN BEGIN THE COURSE OF RADIATION TO THE BRAIN.
Q. NOW, FROM WHAT I HEARD THIS MORNING ABOUT HER CURRENT STATUS AND HER FUTURE, AM I CORRECT THAT YOU AS HER TREATING CANCER SPECIALIST DO NOT BELIEVE IT'S A CERTAINTY THAT SHE IS GOING TO HAVE THE CANCER RETURN TO CAUSE HER DEATH? IS THAT CORRECT?
MS. CHABER: VAGUE AND AMBIGUOUS AS TO "CERTAINTY." I DON'T KNOW IF HE'S ASKING --
THE COURT: HE'S ASKING IF HE IS CERTAIN. I'LL OVERRULE.
THE WITNESS: THE PROBABILITY OF HER DYING FROM

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HER CANCER OVERALL IS 80 PERCENT OR THEREABOUTS. SHE DOES HAVE ABOUT A 20 PERCENT CHANCE OF BEING ALIVE, FREE OF CANCER SEVERAL YEARS DOWN THE ROAD.
MR. BARRON: Q. IN YOUR DEPOSITION -- AND I HAVE THAT HERE. WE CAN PULL IT OUT IN A MINUTE. BUT JUST AS A LEAD-IN, I THINK YOU MENTIONED A 20 TO 30 PERCENT CHANCE. IS THAT STILL YOUR BEST ESTIMATE, NOT JUST 20 BUT 30, OR HAS SOMETHING CHANGED, IN OTHER WORDS, SINCE YOUR DEPOSITION ON SATURDAY?
A. NO. IT'S A RANGE.
Q. OKAY.
A. AND I THINK IF SOMEONE SAID 30, I COULDN'T DISAGREE. IF SOMEONE SAID 15, I COULDN'T DISAGREE. THE REALITY IS SOMEPLACE IN THERE, HOPEFULLY THE HIGHER THE BETTER.
Q. I AGREE WITH YOU. AND IF YOU SAID 20 AND 30 IN YOUR DEPOSITION, THAT WAS A RANGE YOU WERE COMFORTABLE WITH AT THE TIME ON SATURDAY?
A. THAT IS CORRECT.
Q. AND THE REASON IS THAT MS. HENLEY -- THE REASON ABOUT THE 20 OR 30 PERCENT IS THAT SHE IS FORTUNATE ENOUGH TO HAVE HAD LIMITED DISEASE; CORRECT?
A. THAT IS CORRECT.
Q. BECAUSE IF HER DISEASE WAS NOT LIMITED, THEN THOSE PERCENTAGES WOULD BE DRASTICALLY DIFFERENT, WOULD THEY NOT?
A. THAT IS CORRECT.
Q. THEY WOULD BE AS LOW AS 5 PERCENT?

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A. IF SHE IS LUCKY.
Q. RIGHT. IF SHE WAS LUCKY, IF HER DISEASE WAS EXTENSIVE?
A. IF YOU HAVE EXTENSIVE DISEASE, IT IS 5 PERCENT OR LESS THAN FIVE YEARS.
Q. NOW I'D LIKE TURN TO THE SECOND SUBJECT I MENTIONED I WANTED TO TALK WITH YOU ABOUT, WHICH IS HER TREATMENT, IF I COULD. AND AGAIN, PLEASE FEEL FREE. YOU HAVE EXHIBIT 46 BEFORE YOU CORRECT? THOSE ARE YOUR RECORDS AS COPIED?
A. THAT IS CORRECT.

Q. AND THEN YOU HAVE THE ADDITIONAL ONE FOR THE MOST RECENT UPDATE FOR DECEMBER?
A. YES, I DO.
Q. PLEASE FEEL FREE. THIS IS NOT A MEMORY TEST. IF YOU NEED TO LOOK AT IT FOR A DATE TO BE SPECIFIC, PLEASE DO. OKAY?
A. OKAY.
Q. BEFORE YOU SAW MS. HENLEY ON FEBRUARY 17, 1998, SHE HAD BEEN SEEN BY OTHER DOCTORS; CORRECT?
A. THAT IS CORRECT.
Q. AND WHEN YOU FIRST SAW HER, YOU TRIED TO MARSHAL SOME INFORMATION THAT YOU HAD AVAILABLE TO HELP YOU TRY TO ASSIST HER; CORRECT?
A. THAT IS CORRECT.
Q. AND SO WHAT YOU MARSHALED WAS WHAT WAS AVAILABLE TO YOU IN RECORDS?
A. THAT IS CORRECT.

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Q. WHAT YOU COULD GET FROM HER FROM A HISTORY?
A. THAT IS CORRECT.
Q. AND ANY OTHER KINDS OF INFORMATION THAT YOU BROUGHT JUST FROM YOUR PAST TRAINING, EDUCATION AND EXPERIENCE; CORRECT?
A. THAT IS CORRECT.
Q. NOW, I'D LIKE YOU TO HELP ME A LITTLE BIT WITH THIS AS AN ONCOLOGIST. WE'VE HEARD ABOUT SHOULDER PAIN AS SOMETIMES BEING A PRESENTING COMPLAINT WITH SOMEONE WHO HAS LUNG CANCER. WHAT IS IT THAT CAUSES SOMEONE TO HAVE SHOULDER PAIN IF IT'S FROM A LUNG CANCER?
A. IT COULD BE A VARIETY OF THINGS. ONE AND OBVIOUSLY THE MOST WORRISOME IS THAT THE TUMOR HAS SPREAD TO THE SHOULDER AND IT'S CAUSING SOME LOCAL DAMAGE. OCCASIONALLY IF THE TUMOR IS INVOLVING THE DIAPHRAGM, YOU CAN HAVE REFERRED PAIN TO THE SHOULDER.
WHEN WE'RE BORN, IT'S HIGH UP IN THE CHEST. AND AS WE DEVELOP LUNGS AND GROW, THE DIAPHRAGM MOVES DOWN. SO EVER NERVE TREE TO THAT AREA IS RELATED TO THE SHOULDER AND NECK.
SECONDLY OR THIRDLY, THE TUMOR COULD BE LOCALLY SPREADING TO THE PLEURA, WHICH IS THE GLISTENING CELL-LIKE MATERIAL THAT COVERS THE LUNG. AND TUMOR COULD BE IN THAT AREA.
Q. WE'VE ALREADY HEARD ABOUT TWO TYPES OF PLEURA. WE'VE HEARD ABOUT PARIETAL PLEURA AND VISCERAL PLEURA. THE PLEURA THAT YOU ARE TALKING ABOUT IS AGAIN WHAT PLEURA?
A. WELL, HE VISCERAL AND PARIETAL PLEURA ARE

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BASICALLY ON TOP OF EACH OTHER, LIKE TWO SHEETS OF PAPER. IT'S WHAT ALLOWS YOU TO TAKE A DEEP BREATH. IT IS A POTENTIAL SPACE AND NORMALLY THERE'S A VERY THIN LAYER OF FLUID BETWEEN THE TWO PLEURAS. IT'S LIKE PUTTING A GLASS OF WATER ON A GLASS TABLE. THE TOP OF THE GLASS SWEATS, IT SEALS AND YOU CAN'T LIFT THE GLASS UP. SO WHEN YOUR RIBS EXPAND TO TAKE A DEEP BREATH, THE PLEURAS PULL ON EACH OTHER AND EXPAND THE LUNG.
MOST ORGANS IN THE BODY ARE COVERED WITH A TISSUE THAT COULD BE -- THE HEART IS CALLED THE PERICARDIUM AND THE LUNGS IS CALLED THE PLEURA.
Q. WHEN YOU WERE TALKING ABOUT A POSSIBLE CAUSE OF SHOULDER PAIN WHEN PEOPLE HAVE IT FROM LUNG CANCERS BEING SOMETHING IN THE PLEURA, WERE YOU TALKING ABOUT THE VISCERAL

PLEURA OR THE PARIETAL PLEURA OR BOTH?
A. IT COULD BE BOTH.
Q. DO YOU AGREE IN THIS CASE THERE WAS NO HISTORY THAT YOU RECEIVED EITHER FROM MS. HELMSLEY -- HENSLEY, RATHER -- EXCUSE ME -- OR FROM THE RECORDS THAT INDICATED THAT SHE HAD HAD ANY SHOULDER PAIN THAT COULD BE FROM INVOLVEMENT OF THE PLEURA?
A. I HAVE NO RECOLLECTION THAT I WAS CONCERNED THAT THERE WAS DISEASE IN THE SHOULDER AREA.
Q. NOW, AM I RIGHT THAT EVERYTHING UNDERNEATH OR BELOW THE VISCERAL PLEURA WHERE THE LUNGS ARE IS ACTUAL LUNG TISSUE OR WHAT'S ALSO CALLED LUNG PARENCHYMA?
A. YOU WOULD BE CORRECT.
Q. AND AM I CORRECT THAT WHEN YOU GO FROM LUNG

0054

TISSUE, LUNG PARENCHYMA, YOU GO TO THE VISCERAL PLEURA FIRST AND THEN ONCE YOU GET OUTSIDE THE VISCERAL PLEURA, YOU COME TO THE PARIETAL PLEURA?
A. I BELIEVE THAT'S CORRECT?
Q. NOW, WE ALSO HAVE HEARD FROM SOME WITNESS OR WITNESSES ABOUT THE FINDING OF NO SHORTEST OF BREATH THAT WAS SIGNIFICANTLY INTERFERING WITH MS. HENLEY'S ACTIVITIES BEFORE SHE CAME TO BE DIAGNOSED. IS THAT CONSISTENT WITH YOUR RECOLLECTION?
MS. CHABER: I WOULD OBJECT. I THINK IT MISSTATES THE TESTIMONY.
THE COURT: I THINK YOU CAN REPHRASE THE QUESTION AND WE CAN AVOID THAT ISSUE.
MR. BARRON: I WILL DO THAT.
Q. DID YOU FIND ANY HISTORY EITHER FROM HER OR FROM THE MEDICAL RECORDS OF ANY SIGNIFICANT SHORTEST OF BREATH THAT WAS INTERFERING WITH HER ACTIVITIES?
A. ON MY FIRST VISIT ON FEBRUARY 17TH, 1998, SO-CALLED EXHIBIT 44, PLAINTIFF'S, IT STATES "SHE BECOMES WINDED UPON MILD TO MODERATE ACTIVITY."
AND SECONDLY, IT SAYS: "SHE CAN ONLY SING NINE SONGS WHEREAS BEFORE SHE COULD SING 18, 20 OR HIGHER BEFORE HAVING TO STOP."
Q. BUT THAT TYPE OF SHORTEST OF BREATH WOULD BE CONSISTENT WITH SOMEBODY WHO HAD PNEUMONIA OR INFECTION OF THE LUNGS?
A. IT WOULD BE CONSISTENT WITH MANY DIFFERENT THINGS.

0055

Q. HOW SEVERE CAN SHORTNESS OF BREATH BECOME IF SOMEONE HAS SUBSTANTIAL LUNG CANCER WHEN THEY PRESENT?
A. IT COULD BE VARIABLE. YOU COULD HAVE LUNG CANCER AND HAVE NO IMPAIRMENT OF LUNG FUNCTION. AND YOU COULD HAVE TREMENDOUS IMPAIRMENT OF LUNG FUNCTION. IT'S HIGHLY VARIABLE.
Q. DOES IT DEPEND ON WHERE THE CANCER IS LOCATED AND HOW MUCH OF IT THERE IS ALSO?
A. IT CAN BE.
Q. AND IN ORDER FOR -- WITHDRAW THAT. I WILL GO BACK TO THAT LATER. OKAY.
SO WHEN MS. HENLEY CAME TO SEE YOU ON FEBRUARY 17, 1998 FOR THE FIRST TIME, YOU HAD REALIZED THAT SHE HAD HAD SOME WORKUP BEFORE, FOR EXAMPLE, AT USC LOS ANGELES CENTER; CORRECT?
A. THAT IS CORRECT.
Q. AND YOU SAW HER AFTER THAT BRONCHOSCOPY AND

MEDIASTINOTOMY WAS DONE; CORRECT?
A. THAT IS CORRECT.
Q. AND IS IT YOUR OPINION THAT IF A SURGEON SEES ANYTHING THAT LOOKS SOMEWHAT SUSPICIOUS DURING THE BRONCHOSCOPY, IT SHOULD BE BIOPSIED, IF AT ALL TECHNICALLY FEASIBLE?
A. THAT IS USUALLY WHAT IS DONE, UNLESS THE BIOPSY IS GOING TO BE OBTAINED AT ANOTHER SITE.
Q. AND DO YOU AGREE THAT THEY ALSO DO WASHINGS AND BRUSHINGS, IF TECHNICALLY FEASIBLE?
A. AGAIN, IT DEPENDS WHAT THEY ARE LOOKING FOR. BUT

0056

IT'S ONE OF THE PROCEDURES THAT IS DONE DURING BRONCHOSCOPY.
Q. I'D LIKE TO GO TO THE THIRD AREA WITH YOU FOR A MOMENT, DOCTOR, AND TALK TO YOU ABOUT SOME SYMPTOMS, SOME FINDINGS OF LUNG CANCER. OKAY.
AND WHAT I WOULD LIKE TO START OFF BY ASKING YOU IS THAT YOU WERE ASKED DURING THE DIRECT EXAMINATION OF YOU BY MS. CHABER WHETHER YOU FELT THAT THE RESPONSE THAT MS. HENLEY HAD RECEIVED FROM HER TREATMENT WAS CONSISTENT WITH A SMALL CELL CANCER OF THE LUNG. DO YOU REMEMBER THAT?
A. YES AND NO. I BELIEVE THAT THERE WAS A QUESTION THAT DEALT WITH HEMOPTYSIS AND WHY I THOUGHT IT HAD STOPPED. AND THERE WAS A QUESTION AS TO WHETHER OR NOT THE OVERALL COURSE OF TREATMENT AND THE RESPONSE WAS CONSISTENT WITH A SMALL CELL LUNG CANCER. I'M NOT SURE WHICH OF THE TWO YOU'RE REFERRING TO.
Q. OKAY. LET ME SEE IF I CAN EXPLAIN IT THIS WAY. LET'S START OFF WITH -- FIRST OF ALL, YOU MENTIONED YOUR TREATMENT. THE TREATMENT THAT YOU PROVIDED WOULD HAVE BEEN THE SAME TREATMENT HAD MS. HENLEY'S CANCER BEEN A SMALL CELL CANCER BUT ORIGINATING FROM ANOTHER SITE; IS THAT CORRECT?
A. PROBABLY, ALTHOUGH DEPENDING ON THE SITE. IF IT'S A VERY AND HIGHLY UNCOMMON SITE, WE WOULD HAVE HAD TO HAVE DONE A MEDICAL SEARCH TO ENSURE THAT WE WERE PROVIDING HER WITH THE BEST POSSIBLE CARE.
Q. BUT YOU DON'T KNOW OF ANYTHING TODAY THAT WOULD LEAD YOU TO THINK YOU WOULD HAVE DONE ANYTHING DIFFERENT IN TERMS OF HER TREATMENT HAD HER SMALL CELL CANCER STARTED IN ANOTHER ORGAN THAT HAS EPITHELIAL TISSUE AND WOUND UP

0057

CREATING THE MASS WHERE MS. HENLEY'S MASS WAS FOUND; IS THAT TRUE?
A. ONLY IN THE SENSE THAT THE ORIGIN WOULD HAVE TO BE LOCATED WITHIN THE SAME LIMITATIONS AS A LIMITED SMALL CELL LUNG CANCER. WHAT I MEAN BY THAT IS WITHIN A RADIATION TREATMENT AREA THAT COULD BE SAFELY GIVEN.
Q. OKAY. I THINK THAT'S WHAT I'M TRYING TO DRIVE AT, BUT LET ME MAKE SURE WE ARE CONNECTING ON THIS.
IF MS. HENLEY HAD A SMALL CELL CANCER THAT STARTED INITIALLY IN A DISTANT PART OF HER BODY WHICH WAS NOT DISCOVERED OR APPRECIATED BY, SAY, CT STUDIES OR OTHER STUDIES AT THE TIME THAT SHE CAME TO YOU BUT WOUND UP CREATING THAT MASS OR TUMOR THAT SHE HAS EXACTLY WHERE SHE HAS IT, THAT SIX CENTIMETER MASS, AM I CORRECT THAT YOU DON'T KNOW OF ANYTHING AS YOU SIT HERE TODAY THAT YOU WOULD HAVE DONE DIFFERENTLY IN TERMS OF TREATMENT?
A. IF I UNDERSTAND YOUR QUESTION, IF HER SMALL CELL LUNG CANCER, JUST FOR THE SAKE OF DISCUSSION, WOULD HAVE STARTED IN HER BIG TOE AND CREATED A MASS IN THE CENTER OF HER CHEST, THE TREATMENT WOULD HAVE BEEN DIFFERENT FOR IT.

WE WOULD HAVE USED CHEMOTHERAPY ALONE WITHOUT ANY RADIATION.
SO IF YOUR QUESTION IS IF YOU HAVE A SMALL CELL OF THE LIVER OR SMALL CELL OF THE PANCREAS OR OF THE OVARY WITH A MASS IN THE CHEST, WOULD WE HAVE RADIATED THE CHEST AS PART OF OUR TREATMENT, THE ANSWER WOULD HAVE BEEN PROBABLY NOT. WE WOULD ONLY HAVE USED RADIATION IF THE PRIMARY SITE WOULD HAVE BEEN WITH THE SAME DEFINITION AS A SMALL CELL LUNG CANCER.

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Q. OKAY. I'M NOT SURE WE'RE DEALING WITH WHAT I'D LIKE TO DEAL WITH, SO LET ME JUST TRY IT AGAIN. I UNDERSTAND WHAT YOU'RE SAYING.

OKAY. FIRST OF ALL, THERE ARE OCCASIONS WHEN PEOPLE, PATIENTS CAN HAVE A CANCER ACTUALLY BEGIN IN SOME AREA OF THE BODY THAT NEVER IS ACTUALLY DEMONSTRATED TO BE THERE BY DIAGNOSTIC STUDY AND YET HAVE THOSE PATIENTS DEVELOP A MASS WHERE PEOPLE DO DISCOVER IT; CORRECT?

A. THAT'S CORRECT.

Q. SO I WANT TO STICK WITH THAT IDEA. IF FOR EXAMPLE MS. HENLEY HAD A CANCER OF THE SMALL CELL TYPE DEVELOP SOMEWHERE ELSE WHERE THEY DEVELOP IN THE BODY WITHOUT BEING APPRECIATED BUT SHE CAME IN TO THE DOCTORS AS SHE DID WITH OBVIOUSLY A MASS THAT WAS APPRECIATED AS BEING SIX CENTIMETERS IN THAT AREA WHERE WE KNOW IT IS, WHAT I'M ASKING YOU IS WOULD YOUR TREATMENT HAVE CHANGED IN ANY WAY?

A. THE PROBLEM IS I'M NOT SURE THAT I CAN ANSWER YOUR QUESTION IN THE MANNER THAT IT'S BEING ASKED. IF WE ASSUME THAT THIS CANCER STARTED SOMEWHERE ELSE AND WE CAN DEMONSTRATE IT AND WE KNOW IT'S STARTED SOMEWHERE ELSE, THUS RADIATION WOULD NOT HAVE BEEN USED.

IF THIS CANCER STARTED SOMEPLACE ELSE AND IT'S TOTALLY INAPPARENT -- AND I BELIEVE THAT'S WHAT YOU'RE ASKING -- YOU WOULD THEN ASSUME THAT IT'S STARTED SOMEPLACE AND IT'S SPREAD TO THE CENTER OF THE CHEST AND THUS THE ASSUMPTION IS THAT THE TREATMENT WOULD HAVE BEEN THE SAME? I THINK THAT THE PROBABILITY OF THAT IS EXCEEDINGLY LOW. IS IT POSSIBLE? I'M SURE THAT EVERYTHING IS POSSIBLE. IS IT

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LIKELY? NO, I BELIEVE THAT THAT IS HIGHLY LIKELY.

Q. BUT WHAT YOU ARE SAYING IS UNLIKELY IS NOT THAT THE TREATMENT WOULD BE DIFFERENT BUT THAT THAT KIND OF EPISODE WOULD HAPPEN; CORRECT?

A. THAT IS CORRECT.

Q. NOW, AGAIN, IF IN FACT THE CANCER ACTUALLY DEVELOPED OF A SMALL CELL TYPE, NOT IN A DISTANT OR REMOTE AREA BUT IN THE AREA WHERE -- IN THE CHEST AREA, IN THE MEDIASTINUM AREA WHERE THIS MASS WAS PARTIALLY FOUND, AT LEAST, SAME QUESTION: DO YOU AGREE THAT YOU DON'T KNOW OF ANYTHING THAT WOULD HAVE CAUSED YOUR TREATMENT TO CHANGE EVEN IF THE MASS WAS IN THE PRIMARY LUNG MASS BUT SOME OTHER PRIMARY SMALL CELL?

A. IF THE PRIMARY SITE WOULD HAVE BEEN IN THAT AREA THAT COULD BE ENCOMPASSED WITHIN THE AREA OF RADIATION, THE TREATMENT WOULD HAVE BEEN THE SAME. THE OUTCOME MAY BE LESS GOOD, BUT THE TREATMENT WOULD HAVE BEEN THE SAME.

THE COURT: LET US KNOW WHEN YOU GET TO A GOOD SPOT FOR LUNCH.

MR. BARRON: I'M ALMOST THERE THEN. LET ME JUST TRY THIS.

THE COURT: OKAY.

MR. BARRON: Q. DO YOU HAVE ANY STATISTICS FOR

THE OUTCOME FOR TREATMENTS OF SMALL CELL CANCERS BEGINNING IN THE MEDIASTINUM THAT, SAY, COME FROM THE THYMUS IN TERMS OF THEIR OUTCOME IF RADIATION AND CHEMO IS GIVEN JUST AS YOU GAVE MS. HENLEY?

A. NO, I DO NOT.

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MR. BARRON: THIS IS A GOOD TIME.

THE COURT: OKAY. JURORS, I'M ACTUALLY GOING TO GIVE YOU AN EXTRA 15 MINUTES FOR LUNCH TODAY UNTIL 2:00 O'CLOCK. SO PLEASE CONTINUE TO FOLLOW THE ADMONITION AND WE'LL SEE YOU BACK AT 2:00 O'CLOCK.

(THE JURY WAS DISMISSED FOR LUNCH AT 12:15 P.M.)

(THE FOLLOWING PROCEEDINGS WERE HELD IN CHAMBERS, OUTSIDE THE PRESENCE OF THE JURY, AT 12:20 P.M.)

THE COURT: WE'RE IN CHAMBERS, OUTSIDE OF THE PRESENCE OF THE JURY, FOR PURPOSES OF RECORDING SOME INFORMATION OR A REQUEST THAT WE HAVE RECEIVED.

AT A COUPLE OF MINUTES BEFORE 12:00 O'CLOCK, MR. BECKWITH, OUR EXCUSED JUROR, CALLED AND TOLD TATSUO, MY CLERK WHO IS STANDING HERE, WHO HAS WRITTEN A NOTE TO THIS EFFECT, THAT HE, MR. BECKWITH, SAID: "I NEED TO TALK TO THE JUDGE. CAN I TALK TO HIM DURING THE LUNCH BREAK?" AND LEFT A TELEPHONE NUMBER OF 681-5824." AND ACCORDING TO TATSUO'S NOTE, HE SAID HE WAS A LITTLE UPSET.

HAVE I CORRECTLY, TATSUO, STATED THE INFORMATION THAT YOU RECEIVED FROM MR. BECKWITH?

THE CLERK: YES.

THE COURT: OKAY. AND AFTER TALKING WITH COUNSEL OFF THE RECORD ABOUT THIS, I UNDERSTAND THAT THERE IS A STIPULATION AND JOINT REQUEST THAT THE COURT SHOULD RESPOND TO THE NOTE BY HAVING -- OR RESPOND TO THE INQUIRY BY HAVING TATSUO CALL MR. BECKWITH BACK AT THIS POINT AND ADVISING HIM THAT IF HE WISHES TO COMMUNICATE WITH THE

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COURT, HE MUST DO SO IN WRITING.

DO YOU SO STIPULATE THAT THAT'S WHAT SHOULD BE DONE?

MS. CHABER: YES.

MR. OHLEMEYER: SO STIPULATED.

THE COURT: PURSUANT TO THAT STIPULATION, I'M ASKING TATSUO TO PLEASE CARRY THAT OUT. WE CAN GO OFF THE RECORD.

(THE FOLLOWING PROCEEDINGS WERE HELD IN CHAMBERS, OUTSIDE THE PRESENCE OF THE JURY,. AT 12:35 P.M.)

THE COURT: WE'RE BACK ON THE RECORD. TATSUO, WHO IS PRESENT HERE, HAS REPORTED BACK ON A TELEPHONE CONVERSATION HE JUST HAD WITH MR. BECKWITH. AND TATSUO QUOTES MR. BECKWITH AS STATING THE FOLLOWING:

"I DON'T KNOW WHY THEY GOT RID OF ME. I'M PERSONALLY HURT. I DON'T KNOW WHAT'S GOING ON. I'M VERY UPSET. I DIDN'T DO ANYTHING WRONG. IF I DID SOMETHING WRONG, I WANT TO KNOW WHAT I DID WRONG. I CAN'T WRITE MY LETTER TO YOU TODAY. I'LL FIGURE OUT IF I DO IT BY MAIL OR NOT. I DON'T HAVE ACCESS TO A FAX MACHINE."

TATSUO, IS THAT AN ACCURATE STATEMENT OF WHAT MR. BECKWITH SAID?

THE CLERK: YES.

THE COURT: I GATHER AFTER A DISCUSSION WITH

COUNSEL OFF THE RECORD THAT YOUR JOINT REQUEST TO THE COURT AND STIPULATION IS THAT THE COURT DO NOTHING MORE ABOUT THIS

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AND WE'LL WAIT AND SEE IF WE HEAR FROM MR. BECKWITH AGAIN. IS THAT SO STIPULATED?

MS. CHABER: YES.

MR. OHLEMEYER: SO STIPULATED.

THE COURT: OKAY. THAT'S WHAT WE'LL DO PURSUANT TO THE STIPULATION.

(LUNCH RECESS TAKEN AT 12:33 P.M.)

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AFTERNOON SESSION 2:02 P.M.

THURSDAY, JANUARY 21, 1999

(THE FOLLOWING PROCEEDINGS WERE HELD IN THE COURTROOM, IN THE PRESENCE OF THE JURY)

THE COURT: GOOD AFTERNOON, EVERYBODY. OKAY. MR. BARRON, YOU MAY CONTINUE.

CONTINUED CROSS-EXAMINATION

BY MR. BARRON: Q. HELLO AGAIN.

A. HELLO.

Q. PERHAPS MAYBE EVEN TO SPEED THIS UP A LITTLE BIT, IF WE NEED TO, I'M GOING TO PROVIDE AND HAVE GIVEN A COPY TO THE COURT CLERK FOR HIS HONOR A COPY OF YOUR DEPOSITION. SO IF WE NEED TO REFRESH YOUR RECOLLECTION, FOR EXAMPLE, WITH DATES AGAIN OR PERCENTAGES.

I'M GOING TO ASK YOU QUESTIONS ABOUT PERCENTAGES. FEEL FREE TO LOOK AT THIS AND FEEL FREE -- I MIGHT EVEN DIRECT YOUR ATTENTION TO SOME OF IT.

AND THIS IS, AS YOU CAN SEE -- I THINK THAT'S THE ONE THE ONLY ONE THAT WAS TAKEN, WHICH WAS LAST SATURDAY?

A. I BELIEVE THAT'S CORRECT.

Q. OKAY. COULD WE GO BACK FOR A MOMENT, BECAUSE I WANT TO MAKE SURE THAT YOUR TESTIMONY ABOUT THE TREATMENT IS UNDERSTOOD BY ME.

WHEN WE TALKED ABOUT THE CHEMOTHERAPY AND THE RADIATION THERAPY, WE'RE TALKING ABOUT TWO DIFFERENT KINDS OF THINGS DONE BY TWO DIFFERENT PEOPLE; CORRECT?

A. THAT IS CORRECT.

0064

Q. AND IN TERMS OF THE RADIATION THERAPY, EVEN THOUGH YOU DIDN'T DO IT, YOU KNOW WHAT AREA WAS ENCOMPASSED WITH THE RADIATION TO TRY TO HELP MS. HENLEY WITH THE MASS THAT WAS LOCATED WHERE IT WAS; CORRECT?

A. YES.

Q. AND COULD YOU DESCRIBE THAT FOR US AS TO HOW HIGH UP THE RADIATION WENT AND HOW LOW IT WENT IN MS. HENLEY'S CASE?

A. WHEN SOMEONE IS GOING TO HAVE RADIATION, THE RADIATION THERAPIST PLACES SOME TATTOOS ON THE SKIN AND IT'S LIKE AN IN POINT, AND THIS IS WHAT THEY USE ON A DAILY BASIS TO AIM THE RADIATION BEAM. WHEN WE'RE RADIATING PEOPLE WITH SMALL CELL LUNG CANCER, THEY NEED TO ENCOMPASS THE AREA OF KNOWN DISEASE AND THOSE AREAS ADJACENT TO IT.

SO THE AREA OF RADIATION WOULD BE SOMEPLACE FROM BELOW THE ADAM'S APPLE (INDICATING) DOWN TO SOMEPLACE BELOW THE MIDDLE OF THE HEART, ENCOMPASSING SOME DISTANCE ON EACH SIDE OF THE BREASTBONE.

Q. I THINK WE KNOW WHERE THE ADAM'S APPLE IS. COULD YOU ALSO SHOW THE JURY WHERE IT WOULD BE IN TERMS OF THE LOWER PORTION?

A. IT WOULD BE DEFINED PRIMARILY BY WHAT IT LOOKS LIKE ON THE CAT SCAN, AND THAT'S HUGE. THEY LOOK AT THE ANATOMY. BUT BASICALLY, IT WOULD BE SOMEPLACE BY THE END OF THE RIBS (INDICATING).

Q. OKAY. AND THEN HOW WIDE WOULD IT BE?

A. ON MS. HENLEY, ON THE LEFT SIDE (INDICATING), IT WOULD HAVE TO HAVE AT LEAST ONE INCH THAT SURROUNDS THE AREA

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OF KNOWN DISEASE. SO THEY WOULD USE THE X-RAY AND BASICALLY MAP THE TUMOR SIZE ON THE CHEST, MEASURE HALF AN INCH OR AN INCH AND THAT AREA WOULD ALSO BE INCLUDED IN THE RADIATION FIELD.

ON THE OPPOSITE SIDE, IT WOULD BE SOME DISTANCE TO THE RIGHT OF THE BREASTBONE. AND AGAIN, IT'S A TECHNICAL ISSUE, DEPENDING ON WHAT THEY LOOK LIKE, WHAT THE TUMOR LOOKS LIKE ON THE CAT SCAN, BUT USUALLY ABOUT AN INCH.

Q. AND IF THAT IS THE ONLY KNOWN AREA, THE ONLY AREA DEMONSTRATED THAT CAN BE FOUND BY THE DOCTORS FOR WHERE THERE IS TUMOR MASS, THEN THAT IS THE APPROPRIATE AREA OBVIOUSLY, IS IT NOT, TO DO THE RADIATION?

A. THAT IS CORRECT.

Q. AND IT WOULDN'T MATTER IF THERE'S NO OTHER KNOWN AREA WHY PRECISELY OR FROM WHERE THE CANCER CAME THAT GOT THERE; CORRECT?

A. IF WE DON'T KNOW THAT THE CANCER CAME FROM ANOTHER AREA, THEN YOU WOULD STILL TREAT THAT SAME AREA THAT WAS TREATED IN MS. HENLEY.

Q. THAT'S WHAT I WAS TRYING TO GET AT. THANK YOU. OKAY. AND THEN THE CHEMOTHERAPY PART IS WHAT YOU WERE INVOLVED WITH, OBVIOUSLY. AND HAVE YOU BEEN HELPING HER SINCE FEBRUARY 17?

A. THAT IS CORRECT.

Q. OKAY. AND IT WAS ACTUALLY YOUR EFFORT IN COMBINATION WITH THE RADIATION THAT HAS RECEIVED THE RESULT THAT WE TALKED ABOUT EARLIER THAT SHE HAS RECEIVED TO THIS POINT; CORRECT?

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A. THAT IS CORRECT.

Q. AND THE CHEMOTHERAPY, DOES IT DISPERSE IN ESSENCE

KIND OF EVERYWHERE THROUGHOUT THE BODY?
A. THE ANSWER TO THAT IS YES, WITH SOME AREAS OF THE BODY WHERE THE CHEMOTHERAPY MAY NOT PENETRATE VERY WELL. ONE HAPPENS TO BE THE BRAIN. AND FOR SOME TYPES OF CHEMOTHERAPY, THE TESTICLE ACTUALLY. BUT THAT'S NOT THE PROBLEM HERE.
Q. THAT'S RIGHT. SO WITH A FEW EXCEPTIONS THAT WE TALKED ABOUT -- AND I'M SMILING, BECAUSE EVEN A LAWYER KNOWS THAT ANATOMY. EXCEPT WITH THOSE TWO EXCEPTIONS, YOU DID TALK ABOUT -- I FORGOT THE WORD YOU USED FOR THE BRAIN. YOU USED --
A. BLOOD BRAIN?
Q. NO. YOU USED A WORD ABOUT HOW --
A. SANCTUARY?
Q. SANCTUARY. EXCEPT FOR TWO EXCEPTIONS, IS THE CHEMOTHERAPY DOSING EVERYTHING THROUGHOUT MOST OF THE BODY?
A. THAT IS CORRECT.
Q. AND IN THIS CASE, YOU WOULD AGREE THAT THE TREATMENT WAS CORRECT FOR MS. HENLEY BASED ON THE INFORMATION AVAILABLE, NO MATTER WHERE THAT FIRST CANCER CELL DEVELOPED; IS THAT CORRECT?
A. THAT WOULD BE CORRECT.
Q. OKAY. NOW, COULD WE SWITCH FOR A MOMENT TO ANOTHER QUESTION, ANOTHER TOPIC THAT DEALS WITH, FIRST OF ALL, RADIOLOGY. I THINK IN YOUR DEPOSITION SATURDAY YOU MENTIONED TO ME THAT YOU TEND TO DEFER TO RADIOLOGISTS ABOUT

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THE MEANING OF CT REPORTS OR CT STUDIES; IS THAT CORRECT?
A. I TENDS TO DEFER TO RADIOLOGISTS FOR THE INTERPRETATION OF THE CAN SCAN. SOMETIMES WE DISAGREE, BUT I USUALLY DEFER TO THEM.
Q. AND THAT'S NOT UNCOMMON, THAT WELL-TRAINED PHYSICIANS CAN HAVE DIFFERENT INTERPRETATIONS OF RADIOLOGY STUDIES?
A. YES.
Q. BUT WHAT YOU'RE SAYING IS YOU TEND TO DEFER TO THEIR REPORT OR INTERPRETATION BECAUSE THEY TEND TO SPECIALIZE IN THAT?
A. AS LONG AS I FEEL COMFORTABLE WITH THEIR INTERPRETATION, I ACCEPT IT. IF NOT, I QUESTION IT.
Q. AND FOR EXAMPLE, OFTEN YOU DO TEND TO AGREE WITH THEM? FOR EXAMPLE, WE TALKED ABOUT THE DAMAGE IN THE LEFT UPPER LEVEL OF THE HEART THAT YOU THOUGHT, LIKE THE RADIOLOGIST THOUGHT, WAS PROBABLY FROM THE RADIATION; CORRECT?
A. THAT IS CORRECT.
Q. OKAY. NOW I WOULD LIKE TO ASK YOU SOME QUESTIONS ON SOME THINGS ABOUT WHICH WE'VE HEARD FROM SOME OTHERS. AND I'D LIKE TO FIRST ASK YOU ABOUT YOUR EXPERIENCE AND YOUR BELIEF CONCERNING SPUTUM CYTOLOGY. DO YOU AGREE THAT WITH SMALL CELL CARCINOMAS, SPUTUM CYTOLOGY TENDS TO BE POSITIVE?
A. YES.
Q. AND I THINK WE TALKED ABOUT THIS IN THE DEPOSITION ALSO. DO YOU AGREE THAT BRONCHOSCOPY CAN IDENTIFY PRIMARY SMALL CELL CARCINOMA ABOUT 90 PERCENT OF

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THE TIME IF IT'S A LUNG CARCINOMA?
A. THAT IS USUALLY CORRECT.
Q. STEPPING BACK, YOU DO UNDERSTAND FROM THIS CASE THAT ALTHOUGH IT TENDS TO BE POSITIVE, SPUTUM CYTOLOGY OF SMALL CELL CARCINOMA OF THE LUNG, IN MS. HENLEY'S CASE IT

WAS NOT; CORRECT?
A. AS I UNDERSTAND IT, ONE SPUTUM CYTOLOGY DID NOT SHOW ANY MALIGNANT CELLS.
Q. AND WE ALREADY TALKED ABOUT EARLIER THE FACT THAT THE BRONCHOSCOPY DID NOT ENABLE TO SURGEON TO DIAGNOSE PATHOLOGICALLY A SMALL CELL CANCER; CORRECT?
A. THAT IS CORRECT.
Q. NOW, LET'S SEE IF I HAVE THIS CORRECT. SMALL CELL CARCINOMAS AND IF THEY'RE, FOR EXAMPLE, FROM THE LUNG, CAN PRESENT IN TWO WAYS. THEY CAN PRESENT AS LIMITED DISEASE AND AS IT THE CORRECT WORD EXTENSIVE DISEASE?
A. THAT IS CORRECT.
Q. NOW, IN TERMS OF THOSE PERCENTAGES, CAN YOU TELL ME WHAT THE PERCENTAGE FREQUENCY IS OF LIMITED DISEASE, WHICH IS BETTER FROM THE PATIENT'S POINT OF VIEW, OBVIOUSLY, AND MORE EXTENSIVE DISEASE?
A. THE NUMBERS ARE -- I'LL GIVE YOU A RANGE AGAIN. BETWEEN 30 AND 40 PERCENT TENDS TO BE LIMITED DISEASE AND 60 TO 70 PERCENT TENDS TO BE WIDESPREAD DISEASE OR EXTENSIVE DISEASE.
Q. SO AGAIN, MS. HENLEY IS ON THE SMALLER END OF THOSE PERCENTAGES?
A. THAT IS CORRECT.

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Q. NOW, THEN, IF YOU TAKE THE PEOPLE WITH THE SMALLER END OF THE PERCENTAGES LIKE MS. HENLEY, WHO HAS LIMITED DISEASE, THEN YOU CAN ASK THE QUESTION, CAN YOU NOT: WHAT PERCENTAGE OF THOSE PEOPLE WITH APPROPRIATE TREATMENT LIKE YOU PROVIDED AND THE RADIOLOGIST PROVIDED, WHAT PERCENTAGE OF THOSE PEOPLE WILL RESPOND TO THE TREATMENT IN THE WAY YOU'D LIKE THEM TO RESPOND WHERE THEY GET COMPLETE REMISSION? AND WHAT WOULD BE THE ANSWER TO THAT? WHAT ARE THE PERCENTAGES THERE?
A. I'M GOING TO GIVE YOU TWO NUMBERS. THE LIKELIHOOD OF THE TREATMENT SHRINKING THE CANCER RANGES ANYWHERE FROM 70 TO 90 PERCENT. SO THE LIKELIHOOD OF THE CANCER SHRINKING IS QUITE HIGH. OF THAT POPULATION, SOMEWHERE BETWEEN -- ANYWHERE FROM 40 TO 60 PERCENT MAY ACHIEVE A COMPLETE RESPONSE, THIS APPEARANCE OF DISEASE.
THE REASON THE NUMBERS ARE DIFFERENT IS THAT A SERIES OF NUMBERS HAS USED DIFFERENT TYPES OF CHEMOTHERAPY. SOME OF THE PROGRAMS HAVE USED CHEMOTHERAPY FOLLOWED BY RADIATION. SOME OF THEM HAVE USED CHEMOTHERAPY AT THE SAME TIME AS RADIATION.
SO THE NUMBERS TEND TO BOUNCE A LOT. BUT THOSE ARE REASONABLE RANGES IN TERMS OF EXPECTATIONS.
Q. OKAY. JUST SO I'M CLEAR, FOR A COMPLETE RESPONSE, WHERE YOU CANNOT DEMONSTRATE ANY REOCCURRENCE OF THE CANCER EITHER BY ALL THOSE STUDIES WE TALKED ABOUT, CT OF THE CHEST AND THE BONE, THE BRAIN, THE ABDOMEN OR BY CLINICAL FINDINGS, WHAT IS THE PERCENTAGE AGAIN?
A. FOR LIMITED DISEASE, SOMEPLACE BETWEEN --

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PROBABLY A REASONABLE NUMBER WOULD BE BETWEEN 50 AND 60 PERCENT.
Q. AND THAT MEANS THAT THE OTHER PERCENTAGE DO NOT SHOW THAT REMISSION?
A. THAT IS CORRECT.
Q. AND NOW THE QUESTION BECOMES WHEN THEY HAVE THE REMISSION, SOME HAVE REMISSION ONLY FOR A VERY BRIEF PERIOD OF TIME; CORRECT?

A. THAT IS CORRECT.
Q. AND THERE IS A SUBSTANTIAL PERCENTAGE, OR AT LEAST FROM YOUR STANDPOINT, BECAUSE YOU DON'T WANT TO SEE IT HAPPEN, WHO HAVE REOCCURRENCE ALREADY BY THE TIME THAT MS. HENLEY IS HERE TODAY, EVEN THOUGH SHE HASN'T SHOWN IT; CORRECT?
A. THAT IS CORRECT.
Q. WHAT WOULD BE YOUR IDEA OF THE PERCENTAGE THAT WOULD HAVE SHOWN IT BY NOW?
A. OF THOSE WHO YOU'VE DOCUMENTED TOTAL DISAPPEARANCE OF THE DISEASE APPROXIMATELY THREE MONTHS AFTER YOU FINISH CHEMOTHERAPY, I WOULD SAY ABOUT 10 PERCENT OF THEM HAVE ALREADY FAILED. THAT'S A GUESS.
Q. OKAY. NOW, COULD YOU HELP US OUT WITH THIS. WE'VE HEARD A LOT ABOUT THIS TUMOR OR MASS, WHERE IT WAS FOUND AND WHERE IT WAS LOCATED IN MS. HENLEY'S CASE. AND WE'VE HEARD ABOUT IT IN TERMS OF CENTIMETERS.
CAN YOU, FIRST OF ALL, HELP US WITH HOW MANY CENTIMETERS THERE ARE TO AN INCH?
A. I BELIEVE IT'S 2.25 OR THEREABOUTS.

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Q. NOW, IT'S NOT NECESSARILY SOMETHING THAT DOCTORS ALWAYS DO, BUT COMPARING IT TO SOMETHING THAT WE KNOW IN TERMS OF SIZE, THIS WAS LARGER THAN A GOLF BALL WHERE IT WAS LOCATED?
A. YES.
Q. CAN YOU GIVE US AN IDEA OF SOME OBJECT THAT WE MIGHT ALL RECOGNIZE AS TO THE KIND OF SIZE OF THIS? AND IT'S NOT THAT IT WAS PERFECTLY THE SHAPE, BUT JUST AN IDEA OF THE MASS OR THE SIZE?
A. PROBABLY A LITTLE BIT BIGGER THAN A REESE'S PEANUT BUTTER CUP.
Q. SO IF IT'S 2.4 OR 2.5 TO THE INCH, WE'RE TALKING ABOUT WHAT, ABOUT TWO AND A HALF INCHES?
A. THEREABOUTS.
Q. IN DIAMETER?
A. NORMALLY THE RADIOLOGIST MEASURES AT ITS BIGGER DIAMETER.
Q. DO YOU KNOW WHERE THIS WAS MEASURED IN THIS CASE? YOU CAN LOOK AT THE RECORDS, IF YOU LIKE.
A. IT WAS MEASURED BY THE RADIOLOGIST. I DID NOT MEASURE IT.
Q. IN ANY EVENT, IT'S A LARGE ONE; CORRECT?
A. I'M SORRY. IS THAT A QUESTION?
Q. YES. I'M SORRY.
A. IT'S --
Q. LET ME PUT IT THIS WAY -- I'M SORRY.
A. NO. NO. NO.
Q. I WAS GOING TO TRY TO MAKE IT A TIGHTER

0072

QUESTION.
A. IT WOULD BE NICE. "BIG" IS RELATIVE A RELATIVE TERM.
Q. THAT IS WHY I WAS GOING TO MAKE IT TIGHTER.
IT CERTAINLY WAS LARGE WHEN ONE LOOKS TO THE FACT THAT OF THE OTHER CIRCUMSTANCES IN THE CASE, LIKE THE CT FINDING OF JANUARY 3RD NOT SHOWING A DISCRETE NODE OR MASS IN SOME OTHER PLACE OTHER THAN THE MEDIASTINUM/HILUM AREA; CORRECT?
A. CORRECT.
Q. NOW, YOU OVER THE YEARS HAVE SEEN A LOT OF

PATIENTS WITH CANCER; CORRECT?
A. THAT IS CORRECT.
Q. AND A LOT OF PATIENTS WITH CANCER THAT YOU BELIEVED WAS CANCER OF THE LUNG?
A. THAT IS CORRECT.
Q. GETTING TO THESE PERCENTAGES AGAIN, WHAT WOULD BE THE PERCENTAGE, IN YOUR OPINION, OF THE NORMAL POPULATION OF PATIENTS WHO WOULD HAVE A MASS FOUND AS LARGE AS THIS ONE WAS IN THE AREA PRECISELY WHERE IT WAS FOUND BUT NOT HAVE, AS WE JUST TALKED EARLIER, THE CT SHOWS A DISCRETE OTHER MASS OR NODE SOMEWHERE ELSE WITHIN THE LUNG?
IF YOU'D LIKE TO LOOK AT YOUR DEPOSITION TO MAKE SURE.
A. I'M JUST THINKING ABOUT YOUR QUESTION AND HOW I CAN BEST ANSWER IT. IT'S NOT A CLEAR -- IT'S NOT A CLEAR QUESTION IN MY MIND.
Q. LET ME REPHRASE IT FOR YOU, IF I CAN.

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A. PLEASE.
Q. IN FACT, WOULD YOU TURN TO PAGE 76. THIS MAY HELP US OUT AND SPEED THIS UP. PAGE 76, LINE 20.
A. YES.
Q. SO YOU KNOW WHAT I'M ASKING ABOUT, COULD YOU READ DOWN TO --
A. LINE 20?
Q. ACTUALLY, WHY DON'T YOU START, IF YOU WOULD, PLEASE, ON LINE 10 AND READ DOWN TO LINE 21 ON PAGE 76.
MS. CHABER: YOUR HONOR, I WOULD OBJECT.
THE COURT: IF YOU WANT TO MAKE THE OBJECTION, I'LL SUSTAIN.
MR. BARRON: LET ME JUST DO IT THIS WAY THEN. THANK YOU, YOUR HONOR.
Q. LET ME DO IT THIS WAY THEN. I'M JUST TRYING TO ORIENT YOU. DOCTOR, START WITH A PATIENT WHOSE CT SCAN IS APPROPRIATELY DONE AND ADEQUATELY PERFORMED AND DOES NOT SHOW A DISCRETE TUMOR, MASS OR NODULE LOCATED WITHIN THE LUNG PARENCHYMAL TISSUE OR LOCATED ANYWHERE SUBHILAR. DO YOU UNDERSTAND WHAT I'M ASKING?
A. YES.
Q. HOW MANY SUCH PATIENTS 0F YOURS, EITHER BY NUMBERS OR PERCENTAGES, HAVE BEEN SHOWN TO HAVE EVEN WITH THOSE FINDINGS A SMALL CELL CANCER OF SIX CENTIMETERS LOCATED PRECISELY WHERE YOU UNDERSTAND MS. HENLEY'S CANCER WAS LOCATED AND IDENTIFIED?
A. WHEN THE QUESTION WAS ASKED, IT ALSO INCLUDED A NEGATIVE BRONCHOSCOPY. SO DO YOU WANT ME TO ANSWER IT BOTH

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WAYS?
Q. YES. THAT'S WHY I WAS TRYING TO ORIENT YOU. I WANT THE WHOLE -- EXACTLY WHAT WE KNOW ABOUT HER CASE EXACTLY. THANK YOU.
A. THE FIRST PART OF YOUR QUESTION HAS TO DO WITH A CAT SCAN AND A MASS OF SIX CENTIMETERS. UNFORTUNATELY, THE CAT SCAN WILL NOT SHOW WITH ANY DETAIL THE INSIDES OF THE BRONCHIAL TREE. THOSE ARE THE AIR PASSAGES THAT GO FROM THE TRACHEA THROUGH THE PERIPHERY OF THE LUNGS. SO A CAT SCAN DOESN'T REALLY SHOW YOU THAT.
WHAT A CAT SCAN WILL SHOW YOU IS THE CHANGE IN THE DENSITY OF LUNG TISSUE. IT COULD BE TUMOR, IT COULD BE INFECTION. IT COULD BE MANY THINGS.
THEREFORE, IF YOU HAVE A TUMOR IN THE MAIN STEM

BRONCHUS OR THE BRONCHI THAT FOLLOW THAT, THE FIRST AND SECOND ORDER, YOU MAY NOT SEE IT ON THE CAT SCAN. SO I'M NOT SURE I CAN GIVE YOU A NUMBER TO THE FIRST PART OF THE QUESTION.

THE SECOND PART OF THE QUESTION IS ASSUMING THE SAME QUESTION AND NOW A NEGATIVE BRONCHOSCOPY AND THE SECOND ASSUMPTION IS THAT THE BRONCHOSCOPY HAS BEEN PERFORMED WITH CAREFUL EVALUATION OF EVERY SMALL BRANCH OF THE TRACHEOBRONCHIAL TREE AND YOU STILL DON'T SEE ANYTHING, IN MY EXPERIENCE IT'S LESS THAN 5 PERCENT, GIVEN ALL THOSE CAVEATS TO YOUR QUESTION.

Q. AND DOCTOR, WHEN YOU ANSWERED MY QUESTION IN THE DEPOSITION SATURDAY, DID YOU UNDERSTAND THAT WE WERE TALKING ABOUT MS. HENLEY'S CASE, AS YOU UNDERSTOOD IT?

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A. YES. THAT IS CORRECT. IF I REMEMBER OUR EXAMINATION, WE WENT AROUND THIS QUESTION FOR QUITE AWHILE.

Q. SO THE 5 PERCENT, WHEN YOU GAVE THE ANSWER CONCERNING THAT QUESTION, DEALT WITH MS. HENLEY AND HER CIRCUMSTANCES AS YOU KNEW THEM?

A. THAT IS CORRECT.

MR. BARRON: THANK YOU, YOUR HONOR. NO FURTHER QUESTIONS AT THIS TIME.

THE COURT: ANYTHING FURTHER, MS. CHABER?

MS. CHABER: I'M GOING TO BE VERY BRIEF.

THE COURT: OKAY.

REDIRECT EXAMINATION

BY MS. CHABER: Q. DR. MENA, TAKING INTO CONSIDERATION PERCENTAGES OF PATIENTS WHO HAVE RESPONDED THE WAY MS. HENLEY HAS RESPONDED, PERCENTAGES OF PEOPLE WHO PRESENT THE WAY SHE PRESENTS, ARE THOSE ALL THINGS THAT YOU TOOK INTO CONSIDERATION IN FORMING YOUR OPINION THAT SHE HAD A SMALL CELL LUNG CANCER?

A. THEY WERE.

MS. CHABER: NOTHING FURTHER.

THE COURT: OKAY. ANYTHING FURTHER FOR DR. MENA, MR. BARRON?

MR. BARRON: NO, YOUR HONOR. THANK YOU.

THE COURT: MAY THE DOCTOR BE EXCUSED?

MR. BARRON: YES.

THE COURT: MS. CHABER?

MS. CHABER: YES.

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THE COURT: OKAY. DOCTOR, YOU ARE EXCUSED.

THE WITNESS: THANK YOU, YOUR HONOR.

(WITNESS EXCUSED)

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JUDITH ANN OSSA, CSR NO. 2310